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NORTH CAROLINA
REGISTER

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IN THIS ISSUE

FINAL DECISION LETTER

PROPOSED RULES

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Crime Control and Public Safety

Human Resources

Insurance

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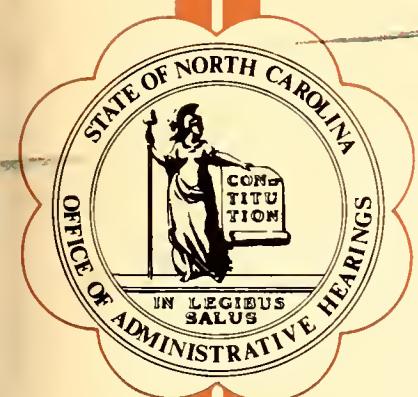
FINAL RULES

Hearing Aid Dealers

LIST OF RULES AFFECTED

ISSUE DATE: APRIL 15, 1988

Volume 3 • Issue 2 • Pages 26-108



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(March 1988 - March 1989)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
03/15/88	02/24/88	03/02/88	04/14/88	07/01/88
04/04/88	03/11/88	03/18/88	05/04/88	08/01/88
04/15/88	03/25/88	04/01/88	05/15/88	08/01/88
05/02/88	04/11/88	04/18/88	06/01/88	09/01/88
05/16/88	04/27/88	05/03/88	06/15/88	09/01/88
06/01/88	05/10/88	05/17/88	07/01/88	10/01/88
06/15/88	05/26/88	06/02/88	07/15/88	10/01/88
07/01/88	06/10/88	06/17/88	07/31/88	11/01/88
07/15/88	06/24/88	07/01/88	08/14/88	11/01/88
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01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

WBR:MAP:TGL:gmh
DJ 166-012-3
T2505-2506
T5446

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

March 25, 1988

Michael Crowell, Esq.
Tharrington, Smith and Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the procedures for conducting the March 29, 1988, bond election, and the consolidation of voting precincts and the polling place therefor for the Southwest Creek Water and Sewerage District in Onslow County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 28, 1988.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to adopt the regulation cited as 10 NCAC 22G .0905; and amend regulations cited as 10 NCAC 42C .2002; 10 NCAC 49A .0002; 10 NCAC 49B .0301, .0303 - .0306, .0308, .0310 - .0311, .0313; 10 NCAC 49C .0101, .0104; 10 NCAC 49D .0001 - .0002; 10 NCAC 49E .0001.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 18, 1988 at Woodoak Building, Second Floor Conference Room, 1100 Navaho Drive, Raleigh, NC 27609.

Comment Procedures: Any interested person may present his/her views and comments either in writing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Bonnie Allred, 325 N. Salisbury Street, Raleigh, N.C. 27611. (919) 733-3055.

CHAPTER 22 - AGING

SUBCHAPTER 22G - PROGRAM OPERATIONS

SECTION .0900 - ALLOCATIONS

.0905 RESPITE CARE

The respite care service funded with Social Services Block Grant funds and administered by the Division of Aging shall be operated in accordance with requirements contained in Chapter 738, Section 101 of the 1987 Session Laws of the North Carolina General Assembly.

Statutory Authority G.S. 143B-153; Chapter 738, 1987 Session Laws.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2000 - PERSONNEL

.2002 QUALIFICATIONS OF SUPERVISOR -IN-CHARGE

The supervisor-in-charge is responsible to the administrator for carrying out the program in the

home in the absence of the administrator. All of the following requirements must be met:

(2) The qualifications of the administrator and co-administrator referenced in Paragraphs (3), (7), ~~and~~ (8) and (9) of Rule .2001 of this Subchapter shall apply to the supervisor-in-charge. The supervisor-in-charge must meet a minimum educational requirement by being at least a high school graduate or certified under the G.E.D. Program or by passing an alternative examination established by the Department of Human Resources. Documentation that these qualifications have been met must be on file in the home prior to employing the supervisor-in-charge;

Statutory Authority G.S. 131D-2; 143B-153.

CHAPTER 49 - AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

SUBCHAPTER 49A - GENERAL PROGRAM ADMINISTRATION

.0002 DEFINITIONS

(19) "Minor Mother" means a mother who is under the age of ~~19~~ 18 who may be payee for an assistance unit or a recipient included in another assistance unit.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.

SUBCHAPTER 49B - ELIGIBILITY DETERMINATION

SECTION .0300 - ELIGIBILITY FACTORS

.0301 AGE

(a) Eligibility requirements pertaining to age shall be found in 45 CFR 233.10 and this provision is hereby adopted by reference under G.S. 150B-14(c).

Authority G.S. 143B-153; 45 C.F.R. 233.39.

.0303 UNITED STATES CITIZENSHIP

(a) Eligibility requirement pertaining to United States Citizenship shall be found in 45 CFR 233.50 and this provision is hereby adopted by reference under G.S. 150B-14(c).

Authority G.S. 143B-153; 45 C.F.R. 233.50.

.0304 KINSHIP AND LIVING WITH A SPECIFIED RELATIVE

(a) Eligibility requirements pertaining to kinship and living with a specified relative shall be found in 45 CFR 233.90 and this provision is

hereby adopted by reference under G.S. 150B-14(c).

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.10.

.0305 RESIDENCE

(a) Eligibility requirements pertaining to residence shall be found in 45 CFR 233.40 and this provision is hereby adopted by reference under G.S. 150B-14(c).

Authority G.S. 108A-35; 143B-153; 45 C.F.R. 233.40.

.0306 DEPRIVATION

Eligibility requirements pertaining to deprivation shall be found in 45 CFR 233.90 and this provision is hereby adopted by reference under G.S. 150B-14(c).

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.90.

.0308 INCOME

(c) In addition to the income exclusions found in 45 CFR 233.20 Earned income exclusions are found in 45 CFR 233.20 and this provision is hereby adopted by reference under G.S. 150B-14(c). In addition, the following items of earned income shall be excluded in determining eligibility:

- (1) Foster Care and State Foster Home Payments equal to or below the state maximum rates to AFDC recipients who serve as foster parents;
- (2) earned income from the 185 percent limitation for up to six months in a calendar year of a child applicant/recipient who is a full-time student.

(d) Good Cause Provisions for Failure to Report Income or Return Monthly Report Timely.

- (1) Circumstances that constitute "good cause" for failing to report income in a timely manner are limited to:
 - (A) the death of a household member;
 - (B) the hospitalization of the applicant/recipient or a dependent child for whom she provides care;
 - (C) failure of the applicant/recipient to report a change in monthly income of five dollars (\$5.00) or less;
 - (D) any other reason determined by the hearing officer based on evidence provided by the recipient.
- (2) Circumstances that constitute "good cause" for failing to return a monthly re-

port form in a timely manner are limited to:

- (A) the death of a household member;
- (B) the hospitalization of the recipient or a dependent child for whom she provides care;
- (C) extenuating circumstances beyond the control of the recipient. Extenuating circumstances are defined as a natural disaster, a fire, computer breakdown, a postal strike, or postal delay provided the return envelope is postmarked the day prior to the deadline;
- (D) any other reason determined by the county director or his designee based on evidence provided by the recipient.

(e) The following items of unearned income shall be included in determining eligibility for or the amount of assistance:

- (1) OASDHI benefits;
- (2) Veterans Administration benefits;
- (3) Railroad Retirement benefits;
- (4) pensions or retirement benefits;
- (5) workmen's compensation;
- (6) unemployment compensation;
- (7) support payments and contributions;
- (8) work release payments;
- (9) dividends and income from trust funds;
- (10) private disability or unemployment benefits, including benefits from insurance plans;
- (11) any portion of loans, grants, or scholarships designated or used for maintenance needs which is a duplication of items included in the assistance standard;
- (12) trade readjustment benefits;
- (13) military allotments;
- (14) brown lung benefits;
- (15) black lung benefits;
- (16) lump sum payments;
- (17) deemed income from a stepparent not receiving assistance;
- (18) deemed income to an alien from a sponsor and his spouse if living together;
- (19) any other income unless excluded by federal law;
- (20) cash contributions. (excluding situations in which household expenses are shared).

(f) In addition to the unearned income exclusions found in 45 CFR 233.20, Unearned income exclusions are found in 45 CFR 233.20 and this provision is hereby adopted by reference under G.S. 150B-14(c). In addition, the following items of unearned income shall be excluded in determining eligibility for assistance.

- (1) food given to or grown by a member of the household;

- (2) the value of the coupon allotment received under the Food Stamp Program;
- (3) child support being routed through IV-D Accounting;
- (4) assistance from other agencies and organizations. This includes financial assistance and in-kind goods or services received from a governmental, civic, or charitable organization so long as such aid is for rehabilitation purposes, special training or educational opportunities and provided no duplication exists;
- (5) HUD Section 8 payments;
- (6) loans (if there is any agreed upon repayment plan);
- (7) Assistance received through the Low Income Energy Assistance Program including the Crisis Intervention Program;
- (8) Home energy assistance as defined in 45 C.F.R. 233.53 and this provision is adopted by reference under G.S. 150B-14(c).
- (9) Income paid to a child recipient through Job Training Partnership Act of 1982 as need-based payments, payments for supportive services, compensation in lieu of wages and payments to Job Corps participants.
- (10) Gifts, including but not limited to birthday, Christmas and graduation, up to thirty dollars (\$30.00) per calendar quarter per assistance unit member. If the payee states in writing the gift was intended for the entire assistance unit, the gift shall be divided among assistance unit members. The gift shall be divided in the manner that is most advantageous to the assistance unit.
(g) Verification. The client shall be responsible for providing verification of earned income including operational expenses for farm or self-employment income. For gifts, the recipient shall be responsible for obtaining a written statement from the provider of the gift indicating the amount, date given and purpose. The county department of social services shall be responsible for all other income verifications.

Authority G.S. 108A-25; 108A-33; 143B-153; 45 C.F.R. 233.

.0310 MONTHLY REPORTING

In addition to the requirements found in 45 CFR 233.36 which is hereby adopted by reference under G.S. 150B-14(c), monthly reporting shall be required on other error-prone classes of recipients as defined by the state based on quality control and other management data.

Authority G.S. 143B-153; 45 C.F.R. 133.28; 45 C.F.R. 233.36.

.0311 WORK INCENTIVE PROGRAM (WIN)

WIN Registration requirements shall be found in 45 CFR 224.20 and this provision is hereby adopted by reference under G.S. 150B-14(c).

Authority G.S. 108A-29; 143B-153; 45 C.F.R. 233.10; 45 C.F.R. 233.20.

.0313 COMMUNITY WORK EXPERIENCE PROGRAM (CWEP)

(b) Exemptions are mandated in 45 CFR 238, which is hereby adopted by reference under G.S. 150B-14(c), except that an individual shall be exempt if he is a parent or other caretaker relative of a child(ren) under age three.

Statutory Authority G.S. 143B-153; 45 C.F.R. 238.

SUBCHAPTER 49C - EMERGENCY ASSISTANCE

SECTION .0100 - COVERAGE

.0101 ELIGIBILITY FOR COVERAGE

- (a) Eligibility for coverage will be as follows:
 - (1) Emergency Assistance shall be provided to or on behalf of a needy child(ren) under the age of 21, the specified relative of the needy child(ren), the spouse of the specified relative and all other individuals sharing the same single unit dwelling with the exception of roomer/boarders and other individuals who occupy a separate apartment within the single unit dwelling. The needy child under the age of 21 who is within the specified degree of relationship must be living with the specified relative or have lived with the specified relative within six months prior to the month in which Emergency Assistance is requested.
 - (2) Families of migrant workers shall be covered if the requirements stated in Paragraph (a) of this Rule and the regulations stated in 45 CFR 233.120 are met. 45 CFR 233.120 is hereby adopted by reference under G.S. 150B-14(c).

Statutory Authority Chapter 1014, Section 119, Session Laws 1985 (1986 Regular Session); 143B-153.

.0104 BENEFIT LEVEL

PROPOSED RULES

(a) The maximum benefit per household is five hundred dollars (\$500) three hundred dollars (\$300.00) during thirty consecutive days. Such assistance cannot be received again within a twelve consecutive month period.

Statutory Authority Chapter 1014, Section 119, Session Laws 1985 (1986 Regular Session); 143B-153.

SUBCHAPTER 49D - WORK SUPPLEMENTATION PROGRAM (WSP)

.0001 WSP OPERATION

(a) Requirements pertaining to operation of WSP are found in 45 CFR 239 and this provision is hereby adopted by reference under G.S. 150B-14(c).

(b) WSP will be operated only in limited specific geographical areas of the State. The areas will be determined by the Division of Social Services.

Statutory Authority G.S. 143B-153; Chapter 1014, Section 128, 1985 Session Laws (1986 Regular Session); 45 CFR 239.

.0002 ELIGIBILITY FOR PARTICIPATION

AFDC recipients or applicants in the following categories shall be eligible to volunteer to participate in WSP:

- (1) AFDC recipients living in the specified areas who are not exempt from the work requirement in place in that area; and
- (2) AFDC recipients who are exempt from work registration solely due to being the caretaker of a child between the ages of three to six years, younger than six years old.

Statutory Authority G.S. 143B-153; Chapter 1014, Section 128, 1985 Session Laws (1986 Regular Session); 45 CFR 239.

SUBCHAPTER 49E - UNEMPLOYED PARENT PROGRAM

.0001 GENERAL PROCEDURES

(a) Requirements pertaining to operation of the Unemployed Parent Program are found in 45 CFR 233.100 and this provision is hereby adopted by reference under G.S. 150B-14(c).

Statutory Authority G.S. 108A-28; 143B-153; Chapter 738, 1987 Session Laws.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend the regulation cited as 10 NCAC 26H .0106.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 1:30 p.m. on May 16, 1988 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by May 16, 1988 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on this amendment is available upon written request from the same address.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES

.0106 APPEALS

(c) Direct rates A direct rate may be adjusted on appeal if the provider can establish to the satisfaction of the state agency that such an adjustment is necessary to protect the health and safety of its patients and to sustain its financial viability. Direct rate adjustments can be considered under this provision only for facilities with direct rates equal to or lower than the mean average rate for all facilities in its level of care (SNF or ICF). Rates may be adjusted upward under this provision to a level that equals the actual amount expended in the most recent 12 month desk or field audited cost report except that no facility's rate so adjusted may be increased to a level greater than:

- (1) the average rate then in effect, or
- (2) 5 percent higher than its current rate for a new facility.

No provider may receive more than one direct rate adjustment between changes in the base year for rates.

A facility is considered to be financially viable, and therefore not eligible for a rate adjustment, if its total Medicaid rate payments and return on equity exceeded its total Medicaid cost as reported in the most recent cost report available.

PROPOSED RULES

Providers are expected to utilize all available funds to provide the services that their patients need. Once a provider has reported a loss for a certain year, a direct rate adjustment can then be negotiated for the following year at a level no greater than what is absolutely necessary for patient care and for the financial viability of the facility. The adjusted rate cannot exceed the applicable maximum direct rate as established by Rule .0102(b)(3).

(d) Direct rates may also be adjusted to:

- (1) correct erroneous data in the rate base;
- (2) accommodate any changes in the levels or prices of resources required to provide patient care that is mandated by state or federal laws or regulations; or
- (3) maintain patient care services at levels commensurate with that provided in the cost reporting period ending September 30, 1984.

(e) (d) Adjustments to reimbursement settlements shall be made on the basis of the reimbursement principles set forth in this plan or incorporated here by reference [See Rule .0104(e)].

Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources - Office of the Secretary intends to amend the regulation cited as 10 NCAC 43L .0201.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 19, 1988 at Albemarle Building, Secretary's Conference Room, 325 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present his/her views and comments either in writing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Jennifer Martin, 325 N. Salisbury Street, Raleigh, NC 27611, (919) 733-6920.

CHAPTER 43 - SERVICES PROGRAM PLAN

SUBCHAPTER 43L - SOCIAL SERVICES BLOCK GRANT

SECTION .0200 - SERVICES TO BE PROVIDED

.0201 SOCIAL SERVICES BLOCK GRANT FUNDED SERVICES

Services which may be reimbursed with Social Services Block Grant Funds are:

- (1) adjustment services for the blind or visually impaired;
- (2) adoption services;
- (3) adult developmental activity programs for individuals who are substantially mentally retarded or severely physically disabled;
- (4) before/after school and summer developmental day centers for children who are mentally retarded;
- (5) child day care services;
- (6) chore services for the blind;
- (7) community living services;
- (8) day care services for adults;
- (9) day treatment programs for children and adolescents who are emotionally disturbed;
- (10) delinquency prevention services;
- (11) developmental day centers for preschool children who are mentally retarded;
- (12) early childhood intervention services for children who are mentally retarded or at high risk for mental retardation;
- (13) employment and training support services;
- (14) family planning services;
- (15) foster care services for adults;
- (16) foster care services for children;
- (17) health support services;
- (18) housing and home improvement services;
- (19) individual and family adjustment services;
- (20) in-home services: chore services;
- (21) in-home services: homemaker services;
- (22) nutrition services;
- (23) outpatient services for individuals of all disability groups;
- (24) partial hospitalization services for adult and elderly individuals who are acutely mentally ill or are substance abusers;
- (25) personal and family counseling;
- (26) preparation and delivery of meals;
- (27) problem pregnancy services;
- (28) protective services for adults;
- (29) protective services for children;
- (30) residential treatment for the emotionally disturbed;
- (31) residential treatment programs for children and adolescents who are emotionally disturbed;
- (32) residential treatment/rehabilitation programs for individuals who are alcohol or other drug abusers;
- (33) respite care services;

- (33)(34) social setting and non-hospital medical detoxification services for individuals who are alcoholics;
- (34)(35) transitional residence programs for adult and elderly individuals who are mentally ill;
- (35)(36) transportation services;
- (36)(37) youth services.

Statutory Authority G.S. 143B-10.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt regulations cited as 11 NCAC 10 .1101 - .1106.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 16, 1988 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Pete Murdza, Actuarial Services, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Pete Murdza at (919) 733-3284, or Linda Stott at (919) 733-4700.

CHAPTER 10 - FIRE AND CASUALTY DIVISION

SECTION .1100 - RATE FILINGS

.1101 PURPOSE

The purposes of this Section are the following:

- (1) To expedite the review of rate filings so that statutory time limits can be met;
- (2) To avoid the time and expense of unnecessary and duplicative data requests;
- (3) To provide for the adequacy of each filing's contents for public inspection.

Statutory Authority G.S. 58-9.

.1102 APPLICABILITY

- (a) Rule .1103 applies to all workers' compensation rate filings made by the North Carolina Rate Bureau.
- (b) Rule .1104 applies to all nonfleet private passenger rate filings made by the North Carolina

Rate Bureau or the North Carolina Reinsurance Facility.

(c) Rule .1105 applies to all rate filings of the North Carolina Rate Bureau other than those covering workers' compensation and nonfleet private passenger automobile insurance.

(d) Rule .1106 applies to all applications for deviations from the rates of the North Carolina Rate Bureau.

Statutory Authority G.S. 58-9; 58-124.20; 58-124.23.

.1103 WORKERS' COMPENSATION

The information required by N.C.G.S. 58-124.20(h) shall be presented as follows:

Note: If in addition to the full years of data specified in any of the below requests, more recent data of less than a full year is available, that data shall also be provided.

- (1) North Carolina premium, loss and loss adjustment experience:
 - (a) Data from all companies writing workers' compensation insurance in North Carolina shall be included in the rate filing. If a company is excluded from the rate level, trend, loss development, expense determination, classification differentials, or investment income calculations, identify that company and its marketshare and provide an explanation for its exclusion.
 - (b) Premiums at current rate level shall be calculated. Whenever on level factors are used, show their derivation. Also show the derivation of the percentages of total premium written and earned at various rate levels.
 - (c) The amount of premium collected from the expense constant shall be shown. Provide this premium in dollars and as a percentage of the standard earned premium and as a percentage of net earned premium. If the percentage of premium collected in this manner is expected to change, estimate the extent of the change and provide the details of this estimation.
 - (d) The amount of premium collected by the minimum premium shall be shown. Provide this premium in dollars and as a percentage of standard earned premium and as a percentage of earned premium. If the percentage of premium collected in this manner is expected to change, estimate the extent of the change and provide the details of this estimation.
 - (e) Earned premiums shall include premium collected from the specific disease loading.

If disease loadings have been excluded, provide a justification.

(f) The latest earned premiums and marketshares for the ten largest workers' compensation insurers in North Carolina shall be provided.

(g) The following information on companies deviating from Bureau workers' compensation rates shall be included for each of the latest five years:

- (i) A list of all deviating companies;
- (ii) The total standard premium written at deviated rates;
- (iii) The percentage of the entire statewide standard premium written at deviated rates;
- (iv) The total amount of deviations in dollars;
- (v) The average percentage deviation for deviating companies;
- (vi) The average percentage deviation for all companies.

(h) The following information on company workers' compensation dividend practices shall be included for each of the latest five years:

- (i) A list of all companies issuing dividends;
- (ii) The total standard premium from policies on which dividends were issued;
- (iii) The percentage of the entire statewide standard premium on which dividends were issued;
- (iv) The total amount of dividends in dollars;
- (v) The average percentage dividend issued by companies issuing dividends;
- (vi) The average percentage dividend issued by all companies.

(i) Information from the Annual Statement on losses and premiums shall be included. Provide such information separately for the latest two Annual Statements including the following items on a composite basis for all workers' compensation insurers in North Carolina:

- (i) Page 14, Line 16;
- (ii) Part 2, Line 16;
- (iii) Part 2B, Line 16;
- (iv) Part 3A, Line 16.

(j) All policy year and accident year incurred loss data used in the filing shall be provided in the aggregate and also separated into paid losses, case incurreds, and incurred but not reported losses.

(k) For all incurred loss adjustment expense data contained in the filing, the related incurred losses shall be shown.

(2) Credibility factor development and application. All information relating to the selection of the credibility factors contained in the filing shall be provided. The following information shall be included:

- (a) All data reviewed and worksheets used in regard to credibility factors.
- (b) A complete description of the methodology used to derive the factors.
- (c) A description of alternative methodologies used or considered for use by the National Council on Compensation Insurance in other states.
- (d) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing.
- (e) Specific details regarding the application of these criteria in the selection of a methodology for this filing.
- (f) Details on the application of the methodology to this filing.

(3) Loss development factor development and application.

- (a) So that loss development factors can be produced, the following loss data at successive evaluation dates shall be provided:
 - (i) At least the latest available five years of data for matching companies for all pairs of successive evaluation dates;
 - (ii) Data on both a policy year and an accident year basis;
 - (iii) Data separated into indemnity and medical only losses as well as combined data;
 - (iv) Data separated into paid, case incurred, and incurred but not reported portions as well as total losses;
 - (v) Reported indemnity, medical only, and total claims for all years and evaluation dates for which loss information is provided.
- (b) So that the different development patterns by type of injury can be traced, the following loss data shall also be included:
 - (i) At least the latest available ten unit statistical policy years of loss data for matching companies for all pairs of successive evaluation dates;
 - (ii) Case incurred losses, number of claims, standard earned premium, and earned exposures;
 - (iii) Losses separated into indemnity and medical losses;
 - (iv) Compensable claim experience separated into deaths, permanent totals, major permanent partials, minor permanent partials, and temporary totals;

(v) Current on-level benefit factors for each injury type split between indemnity and medical;

(vi) For each policy year, the actual average wage and the average wage after the application of any payroll limitation;

(vii) All calculations and worksheets underlying the above data.

(c) All information relating to the selection of the loss development factors contained in the filing shall be provided. The following information shall be included:

- (i) All data reviewed and worksheets used in regard to loss development factors;
- (ii) A complete description of the methodology used to arrive at the selected factors;
- (iii) A description of alternative methodologies used or considered for use by the National Council on Compensation Insurance in other states;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.

(d) For each of the ten largest writers of workers' compensation insurance in North Carolina, a statement regarding any reserve strengthening or weakening that has occurred in the last five years shall be included.

(4) Trending factor development and application.

- (a) So that a variety of possible trend factors may be evaluated, provide the following calculations:
 - (i) Indemnity and medical trend factor calculations based upon both North Carolina policy year data and North Carolina accident year data.
 - (ii) Indemnity and medical trend factor calculations based upon countrywide policy year and accident year data.
 - (iii) Indemnity and medical trend factor calculations for individual states on both a policy year and an accident year basis and their reconciliations with the countrywide factors.
 - (iv) For the medical trend, separate compilations for fee schedule and non-fee schedule states on both a policy year and an accident year basis.
 - (v) Econometric projections of claim severity, claim frequency, and average weekly wages based on models used by or available to the North Carolina Rate Bureau, to the National Council on Compensation Insurance, or to any member company thereof.
- (b) All information relating to the selection of the trend factors contained in the filing shall be provided. The following information shall be included:
 - (i) All data reviewed and worksheets used in regard to trend factors;
 - (ii) A complete description of the methodology used to derive the selected factors;
 - (iii) A description of alternative methodologies used or considered for use by the National Council on Compensation Insurance in other states;
 - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
 - (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.

(5) Changes in premium base and exposures.

- (a) Information on the distribution by size of policy shall be provided so that the effects of premium discount, the expense constant, and the minimum premium rule can be calculated. This information shall include the number of policies and dollar amount of premium in North Carolina for the latest available five years separately for stock and nonstock companies, and combined using the following premium size distribution \$0 - \$99, \$100 - \$199, \$200 - \$299, \$300 - \$499, \$500 - \$999, \$1,000 - \$2,999, \$3,000 - \$4,999, \$5,000 - \$9,999, \$10,000 - \$24,999, \$25,000 - \$49,999, \$50,000 - \$99,999, \$100,000 - \$249,999, and over \$249,999.
- (b) Any countrywide distributions of number of policies or premium by layer that is used in the filing shall be described. Also provide details of how such distributions have been used in the rate filing and a description of any adjustments that have been made to the distributions.
- (c) The changes in the statewide average weekly wage for the latest five calendar years shall also be included as well as estimated changes during the period when the rates will be in effect.

(6) Limiting factor development and application. Information on the following items shall be provided:

- (a) Limitations on losses included in the statistical data used in the filing;

- (b) Limitations on the extent of the rate level change;
- (c) Limitations on the extent of classification rate changes;
- (d) Any other limitations applied.
- (7) Overhead expenses.
- (a) All information relating to the derivation of the expense provisions contained in the filing shall be provided. The following information shall be included:
 - (i) All data reviewed and worksheets used in regard to expense provisions;
 - (ii) A complete description of the methodology used to derive the selected provisions;
 - (iii) A description of alternative methodologies used or considered for use by the National Council on Compensation Insurance in other states;
 - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
 - (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
- (b) The filing shall include support for all the expense, tax, and profit provisions for the proposed rates, under both the current and proposed expense programs. Explain why these provisions are appropriate for all types of insurance companies.
- (c) The proposed expense provisions shall be compared to those included in the latest Insurance Expense Exhibit, to the preliminary data underlying the next such Exhibit (if available), and to any other compilations of countrywide or statewide expenses. Describe any adjustments of countrywide data to reflect North Carolina conditions and provide the details of the underlying calculations. If the proposed provisions differ from those indicated by the data, provide an explanation.
- (d) All information available shall be provided on how proposed allowances for expenses are reviewed each year by committees of the National Council on Compensation Insurance and the North Carolina Rate Bureau.
- (e) If any of the collected loss data includes taxes or assessments of any type, the dollar amount of such taxes or assessments shall be calculated.
- (f) The details of the derivation of the tax multiplier shall be provided.
- (g) For each of the ten largest writers of workers' compensation insurance in North Carolina, a statement regarding any expense cutting activities undertaken in the last three years shall be included.

(8) The percent rate change.

(a) The overall statewide rate change shall be shown and as well as the amount of the change attributable to each of the following: loss experience, a modification of the trend factor, a change in expense provisions, law amendments, a change in the tax provision, a change in the assessment provision, and any other factors.

(b) The rate changes for each industry group and each classification shall also be shown.

(9) Proposed rates. The proposed rates for each classification shall be included.

(10) Investment earnings. Information on anticipated investment income is necessary to establish the provision for underwriting profit and contingencies in the rates.

(a) Information on the amount of investment income earned on loss, loss expense and unearned premium reserves in relation to both net and standard earned premium for workers' compensation in North Carolina shall be calculated for the latest five years and estimated for the current year and all years during which the proposed rates will be in effect. Provide the derivation of such calculations in detail including the amount of the composite reserves of each type at the beginning and end of each of the specified years.

(b) Information on the estimated average length of time that elapses between the occurrence of a compensable accident in North Carolina and the payment of a claim shall be provided. The average shall be a weighted average based on size of claim payments. Indicate how the length has changed over the last ten years.

(c) To evaluate recent insurer profitability, composite information from the Annual Statement for all workers' compensation insurers in North Carolina shall be included. Provide the following information from the latest two Annual Statements in the same format and detail as the exhibits in individual company statements:

- (i) Page 2 (Assets);
- (ii) Page 3 (Liabilities, Surplus and Other Funds);
- (iii) Page 4 (Underwriting and Investment Exhibit);

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(iv) Exhibit 1 (Analysis of Assets);
(v) Schedule P sections dealing with workers' compensation.

(11) Identification and Certification of Statistical Plans.

(a) All statistical plans used or consulted in preparing this filing shall be identified. Also describe the data compiled by each plan.

(b) A certification that all the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation of each company's experience to the best of their knowledge shall also be provided.

(12) Investment Earnings on Capital and Surplus. Given the selected underwriting profit and contingency loading contained in the filing, the resulting rates of return on equity capital, on total assets, and on assets assigned to insurance operations including consideration of investment income shall be calculated. Show the derivation of all factors used in producing these calculations and provide justification that these rates of return are reasonable and fair.

(13) Level of Capital/Surplus Needed. To calculate returns on capital and surplus, the following information shall be provided.

(a) Aggregate premium to surplus ratios for the latest five calendar years for all companies writing workers' compensation insurance in North Carolina;

(b) Estimates of comparable ratios for the years during which the rates will be in effect.

(14) Other Information.

(a) Information on certain aspects of Workers' Compensation Individual Risk Rating Plans shall also be provided. For the following items, include an explanation of their purpose and a detailed description of their derivation:

(i) Expected loss rate;
(ii) D-Ratio;
(iii) Excess loss factors;
(iv) Excess loss adjustment amounts;
(v) Table of weighting and ballast values.

(b) All information on the various preliminary and intermediate steps taken in preparing the filing shall be included with it. The following information shall be included:

(i) Agendas and minutes of meetings of the North Carolina Rate Bureau affecting the filing. Include a list of all attendees at these meetings, their titles, and their affiliations.

(ii) Agendas and minutes of meetings of the National Council on Compensation Insurance affecting the filing explicitly, or implicitly through the adoption of a countrywide procedure. Include a list of all attendees at these meetings, their titles, and their affiliations.

(iii) Correspondence between the above two entities and between each of the entities and its consultants affecting the filing.

(iv) Contracts and agreements between the above two entities relating to the filing or its preparation.

(v) Payments to the National Council on Compensation related to this filing and the prior one.

(vi) Payments to any other consultants (including lawyers, actuaries, and economists) related to this filing and the prior one.

(c) All information relating to the derivation of the profit and contingency loading contained in the filing shall be provided. The following information shall be included:

(i) All data reviewed and worksheets used;

(ii) A complete description of the methodology used to arrive at the selected loading;

(iii) A description of alternative methodologies used or considered for use by the National Council on Compensation Insurance in other states;

(iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

(v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(d) Information shall also be provided on all filings by the National Council on Compensation Insurance that have been submitted with an underwriting profit and contingency loading other than 2.5 percent or that have been approved with a provision other than 2.5 percent. For all such filings in the last five years, list the state, the underwriting profit and contingency loading submitted, the loading approved, and the effective date of the rates.

(15) Additional Information. The commissioner may require such other information as he deems necessary to constitute a proper rate filing.

Statutory Authority G.S. 58-9; 58-124.20(h).

.1104 NONFLEET PRIVATE PASSENGER AUTOMOBILE

The information required by N.C.G.S. 58-124.20(h) for nonfleet private passenger automobile rate filings shall be presented as follows:
Note: If in addition to the full years of data specified in any of the below requests, more recent data of less than a full year is available, that data shall also be provided.

- (1) North Carolina premium, loss and loss adjustment experience;
- (a) Data from all companies writing nonfleet private passenger automobile insurance in North Carolina shall be included in the rate filing. If a company is excluded from the rate level, trend, loss development, excess loss factor, expense determination, territorial development, or investment income calculations for any coverage, identify the coverage, the company and its marketshare and provide an explanation for its exclusion.
- (b) For each coverage, premium at present rates shall be calculated. Indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any aggregate factors used.
- (c) The latest earned premiums and marketshares for the ten largest private passenger insurers in North Carolina shall be provided.
- (d) Information from the Annual Statement on losses and premiums shall be included. Provide such information separately for the latest two Annual Statements including the following items on a composite basis for all nonfleet private passenger insurers in North Carolina:
 - (i) North Carolina Page 14, Lines 19.1, 19.2, and 21.1;
 - (ii) Part 2, Lines 19 and 21;
 - (iii) Part 2B, Lines 19 and 21;
 - (iv) Part 3A, Lines 19 and 21.
- (e) The following information on companies deviating from Bureau nonfleet private passenger rates shall be included for each of the latest five years by coverage:
 - (i) A list of all deviating companies;
 - (ii) The total manual premium written at deviated rates;
 - (iii) The percentage of the entire statewide premium written at deviated rates;
 - (iv) The total amount of deviations in dollars;
 - (v) The average percentage deviation for deviating companies;

- (vi) The average percentage deviation for all companies.
- (f) The following information on companies issuing consent to rate surcharges for nonfleet private passenger automobile rates by physical damage coverage shall be included for each of the latest five years:
 - (i) A list of all issuing companies;
 - (ii) The total manual premium written for risks that have such surcharges;
 - (iii) The percentage of the entire statewide premium written on risks with surcharges;
 - (iv) The total amount of the surcharges in dollars;
 - (v) The average percentage surcharge for companies issuing surcharges;
 - (vi) The average percentage surcharge for all companies.
- (g) The following information on companies issuing dividends on nonfleet private passenger automobile policies shall be included for each of the latest five years:
 - (i) A list of all companies issuing dividends;
 - (ii) The total manual premium written on policies on which dividends were issued;
 - (iii) The percentage of the entire statewide premium written on policies on which dividends were issued;
 - (iv) The total amount of dividends in dollars;
 - (v) The average percentage dividend for companies issuing dividends;
 - (vi) The average percentage dividend for all companies.
- (h) For each coverage and each year used in setting the overall rate level, the following information on dollars of incurred losses shall be provided:
 - (i) Paid losses;
 - (ii) Case basis reserves;
 - (iii) Loss development;
 - (iv) Incurred allocated loss adjustment expense;
 - (v) Incurred unallocated loss adjustment expense;
 - (vi) Applied trend factor;
 - (vii) Total incurred losses.
- (i) Whenever North Carolina losses are separated into excess (catastrophe) and non-excess (noncatastrophe) losses, a clear description and justification of the standard used to separate such losses shall be included. In determining an excess (catastrophe) loading, include as many years of data as possible. If the number of years included differs from the number available, provide an explanation. Also pro-

vide an explanation if the data from which the excess loading is derived differs from that on which the rate level change is based.

(j) Territorial rate calculations shall include written premiums, earned premiums, paid losses, incurred losses, and the number of claims by territory for each of the years used to determine the territorial relativities.

(k) All information related to the derivation of classification differentials contained in the filing should be provided. The following information shall be included:

- (i) All data reviewed and worksheets used;
- (ii) A complete description of the methodology used to arrive at the differentials;
- (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.

(l) For all incurred loss adjustment expense data contained in the filing, the related incurred losses shall be shown.

(2) Credibility factor development and application. All information related to the derivation of credibility factors contained in the filing should be provided. The following information shall be included:

- (a) All data reviewed and worksheets used;
- (b) A complete description of the methodology used to derive the factors;
- (c) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
- (d) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (e) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (f) Details on the application of the methodology to this filing.

(3) Loss development factor development and application.

- (a) All information related to the derivation of loss development factors contained in the filing shall be provided. The following information shall be included:
 - (i) All data reviewed and worksheets used;
 - (ii) A complete description of the methodology used to derive the factors;
 - (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
 - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
 - (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.

- (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.
- (d) Information, including studies, analyses, and fact sheets, regarding the effects (both countrywide and in North Carolina) of the following items shall be provided. If the effects have been incorporated into the rate filing, describe in detail the methodologies used.
 - (i) Changes in seat belt use;
 - (ii) Changes in drinking age;
 - (iii) Changes in the price and amount purchased of gasoline;
 - (iv) Changes in the average monthly miles traveled by individual drivers;
 - (v) Other legislative, regulatory, social, or economic factors that could have an impact on loss frequency or severity.
- (5) Changes in premium base and exposures.
 - (a) Data on the mix of policies by different policy terms shall be submitted. For the latest five years, include both the number of policies and the amount of earned premium for different policy terms.
 - (b) Data on age and symbol relativities shall be submitted. Submit all information available on such relativities for the latest five years.
 - (c) The trend in the average age and symbol relativities shall be calculated and included in the determination of the rate level change for physical damage coverages. Explain how this trend was calculated and provide all intermediate calculations.
- (6) Limiting factor development and application. Information on the following items shall be provided:
 - (a) Limitations on losses included in the statistical data used in the filing;
 - (b) Limitations on the extent of the rate level change by coverage;
 - (c) Limitations on the extent of territorial rate changes;
 - (d) Any other limitations applied.
- (7) Expenses.
 - (a) All information related to the derivation of expense provisions contained in the filing shall be provided. The following information shall be included:
 - (i) All data reviewed and worksheets used;
 - (ii) A complete description of the methodology used to derive the provisions;
 - (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
 - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
 - (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
- (b) Earned premium and unallocated loss adjustment expenses for each of the latest five years shall be included. If available, provide such information by coverage and groups of coverages.
- (c) Number of claims (all limits and all deductibles) by coverage and allocated loss adjustment expenses for each of the last five years shall also be included. If available, provide such information by coverage and groups of coverages.
- (d) For each of ten largest writers of private passenger automobile insurance in North Carolina, statements regarding any expense cutting activities undertaken in the last five years shall be provided.
- (8) The percent rate change.
 - (a) The overall statewide rate change shall be shown as well as the amount of the change attributable to each of the following: loss experience, the trend factor, a change in expense provisions, law changes, a change in the tax provision, a change in the assessment provision, and other changes.
 - (b) The information described in (a) shall also be provided by coverage and for physical damage coverages by deductible.
- (9) Proposed rates.
 - (a) Proposed rates for each territory and coverage shall be provided.
 - (b) Proposed classification differentials shall also be described. Also include an explanation of how classification rates are determined and a sample calculation.
- (10) Investment earnings. Information on anticipated investment income is necessary to establish the provision for underwriting profit in the rates.
 - (a) Information on the amount of investment income earned on loss, loss expense, and unearned premium reserves in relation to earned premium for private passenger automobile in North Carolina shall be cal-

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culated for the latest two years and estimated for the current year and all years during which the proposed rates will be in effect. Calculations shall be provided in detail including the amount of the composite reserves of each type at the beginning and end of each of the specified years.

(b) Information on the estimated average length of time that elapses between the occurrence of an insured loss and its payment shall be provided by coverage. The average shall be a weighted average based on the size of claim payments. Indicate how the length by coverage has changed over the last five years.

(c) To evaluate recent insurer profitability, composite information from the Annual Statement for all insurers writing nonfleet private passenger automobile insurance in North Carolina shall be included. Provide the following information from the latest two Annual Statements in the same format and detail as the exhibits in individual company statements:

- (i) Page 2 (Assets);
- (ii) Page 3 (Liabilities, Surplus and Other Funds);
- (iii) Page 4 (Underwriting and Investment Exhibit);
- (iv) Exhibit 1 (Analysis of Assets).

(11) Identification and Certification of Statistical Plans.

- (a) All statistical plans used or consulted in preparing this filing shall be identified. Also describe the data compiled by each plan.
- (b) A certification that all the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation of each company's experience to the best of their knowledge shall also be provided.

(12) Investment Earnings on Capital and Surplus. Given the selected underwriting profit and contingencies loadings contained in the filing, indicate the resulting rate of return on equity capital, on total assets, and on assets assigned to insurance operations including consideration of investment income. Show the derivation of all factors used in producing the calculations. Provide justification that these rates of return are reasonable and fair.

(13) Level of Capital/Surplus Needed.

- (a) Aggregate premium to surplus ratios for the latest three calendar years for all companies writing nonfleet private passenger

automobile insurance in North Carolina shall be included.

(b) Estimates of comparable ratios for the years during which the rates will be in effect shall also be provided.

(14) Other Information.

- (a) All information on the various preliminary and intermediate steps taken in preparing the filing shall be included with it. This would include among other things, the following items:

- (i) Agendas and minutes of the North Carolina Rate Bureau affecting the filing. Include a list of all attendees at these meetings, their titles, and their affiliations.
- (ii) Agendas and minutes of meetings of the Insurance Services Offices affecting the filing explicitly or implicitly through the adoption of a countrywide procedure. Include a list of all attendees at these meetings, their titles, and their affiliations.
- (iii) Correspondence between the above two entities and between one of the entities and its consultants affecting the filing.
- (iv) Contracts and agreements between the above two entities relating to the filing or its preparation.
- (v) Payments to the Insurance Services Office related to this filing and the prior one.
- (vi) Payments to other consultants (including lawyers, actuaries, and economists) related to this filing and the prior one.

(b) All information related to the derivation of the profit and contingency loading contained in the filing should be provided. The following information shall be included:

- (i) All data reviewed and worksheets used;
- (ii) A complete description of the methodology used to arrive at the selected loading;
- (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Special details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.

(15) Additional Information. The commissioner may require such other information as he deems necessary to constitute a proper rate filing.

Statutory Authority G.S. 58-9; 58-124.20(h).

.1105 OTHER RATE BUREAU LINES

The information required by N.C.G.S. 58-124.20(h) shall be presented as follows:

Note: If in addition to the full years of data specified in any of the below requests, more recent data of less than a full year is available, that data shall also be provided.

- (1) North Carolina premium, loss and loss adjustment experience;
- (a) Data from all companies writing a coverage in North Carolina shall be included in the rate filing. If a company is excluded from the rate level, trend, loss development, excess loss factor, expense determination, territorial development, or investment income calculations for any coverage, identify the line or coverage, the company and its marketshare and provide an explanation for its exclusion.
- (b) Only data from coverages under the North Carolina Rate Bureau's jurisdiction shall be included in the rate level determination. Indicate if and how non-Bureau data has been excluded from package policies. Also indicate if and how such data has had an effect on the filing (e.g., trend, expense provisions, etc.).
- (c) If data from monoline coverages is used in the determination of package rate levels or vice versa, the following information shall be provided:
 - (i) A clear description of the differences between the types of data;
 - (ii) A description of which causes of loss are included or excluded;
 - (iii) Information on whether both types of experience are for the same companies;
 - (iv) Comparable loss data for all years. (For example, if monoline experience before a certain date supplements package experience after that date, also include the monoline experience after that date.)
- (d) Adjustments made to premiums and losses in the filing shall be clearly described. Show the unadjusted amounts to which adjustments were made, identify the specific adjustments, provide details on the derivation, calculation, and application of the adjustment factors, and include backup exhibits and information on all intermediate calculations.
- (e) For each coverage, premium at present rates shall be calculated. Indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any aggregate factors used.

- (f) The latest earned premiums and marketshares for the ten largest writers in North Carolina of each coverage included in the filing shall be provided.
- (g) Information from the Annual Statement on losses and premiums shall be included. Provide such information separately for the latest two Annual Statements including the following items for each line included in the filing on a composite basis for all insurers writing each included in the filing in North Carolina:
 - (i) North Carolina Page 14;
 - (ii) Part 2;
 - (iii) Part 2B;
 - (iv) Part 3A.
- (h) The following information on companies deviating from Bureau rates for each coverage included in the filing shall be included for each of the latest five years:
 - (i) A list of all deviating companies;
 - (ii) The total manual premium written at deviated rates;
 - (iii) The percentage of the entire statewide premium written at deviated rates;
 - (iv) The total amount of deviations in dollars;
 - (v) The average percentage deviation for deviating companies;
 - (vi) The average percentage deviation for all companies.
- (i) The following information on companies issuing dividends on policies covered by the filing shall be included for each of the latest five years:
 - (i) A list of all companies issuing dividends;
 - (ii) The total manual premium written on policies on which dividends were issued;
 - (iii) The percentage of the entire statewide premium written on policies on which dividends were issued;
 - (iv) The total amount of dividends in dollars;
 - (v) The average percentage dividend for companies issuing dividends;
 - (vi) The average percentage dividend for all companies.
- (j) For each coverage and each year used in setting the overall rate level, the following information on dollars of incurred losses shall be provided:
 - (i) Paid losses;
 - (ii) Case basis reserves;
 - (iii) Loss development;
 - (iv) Incurred allocated loss adjustment expense;
 - (v) Incurred unallocated loss adjustment expense;

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(vi) Applied trend factor;

(vii) Trended total incurred losses and LAE.

(k) Whenever North Carolina losses are separated into excess (catastrophe) and non-excess (noncatastrophe) losses, the following information shall be included:

- (i) All data reviewed and worksheets used;
- (ii) A complete description of the methodology used to arrive at the selected loading;
- (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing including the reasons for selecting the number of years of experience used.

(l) Details on the perils that produced excess losses shall be provided, including the following:

- (i) Identification of the severe windstorm occurrences that took place during years with excess losses;
- (ii) The percentage of each year's losses that can be assigned to such occurrences (on an individual storm basis);
- (iii) The extent to which the excess losses reflect an increase in frequency or an increase in severity;
- (iv) The territorial distribution of wind-storm losses during those years.

(m) All available loss data by cause of loss shall be provided. Provide this in as much statistical detail as is available and indicate whether adjustment procedures or factors were applied to the separated data.

(n) Territorial rate calculations shall include written premiums, earned premiums, paid losses, incurred losses, and the number of claims by territory for each of the years used to determine the territorial relativities.

(o) Premium distribution by territory shall also be included for the years whose experience is used in the calculation of the excess multiplier.

(p) For all incurred loss adjustment expense data contained in the filing, the related incurred losses shall be shown.

(q) If premium comparisons with other states are included, five-year loss ratios for the particular policy form, construction type, etc. used in the comparison shall be included. Also provide five-year statewide loss ratios.

(2) Credibility factor development and application. All information related to the derivation of credibility factors contained in the filing should be provided. The following information shall be included:

- (a) All data reviewed and worksheets used;
- (b) A complete description of the methodology used to arrive at the selected loading;
- (c) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
- (d) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (e) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (f) Details on the application of the methodology to this filing.

(3) Loss development factor development and application.

- (a) All information related to the derivation of loss development factors contained in the filing shall be provided. The following information shall be included:
 - (i) All data reviewed and worksheets used;
 - (ii) A complete description of the methodology used to arrive at the selected loading;
 - (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
 - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.

(b) Provide for each coverage included in the filing complete (including the upper left portion) paid loss development triangles for the ten latest available accident years at all available development points. Also provide the corresponding loss development factors and five-year average factors derivable from these triangles.

(c) Provide the same information in (b) for incurred losses.

(d) Provide the same information in (b) for number of paid claims.

(e) Provide the same information in (b) for number of outstanding claims.

(f) If available, provide the information in (b), (c), (d), and (e) by cause of loss.

(g) For each of the ten largest writers of each coverage included in the filing, a statement regarding any reserve strengthening that has occurred in the last five years shall be included.

(4) Trending factor development and application.

(a) For the latest five years, all available industry data on changes in loss frequency and severity, by cause of loss, for losses for each coverage included in the filing shall be provided. Include both country-wide and North Carolina data.

(b) All information related to the derivation of loss trend factors contained in the filing shall be provided. This information should include at a minimum the following:

(i) All data reviewed and worksheets used;

(ii) A complete description of the methodology used to arrive at the selected factors;

(iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;

(iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

(v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(c) If external indices are used for trending purposes, provide evidence that such indices are good indicators of the selected cost changes, including comparisons between the actual changes in loss costs and those estimated by the indices. Indicate whether any consideration has been given to the possibility that the indices lag behind the actual data.

(5) Changes in premium base and exposures.

(a) Data on the mix of policies by different policy terms shall be submitted. For the latest five years, include both the number of policies and the amount of earned premium for different policy terms. Also estimate these distributions during the period when the rates are in effect.

(b) Information on what payment options are currently available and have been available for the latest five years shall be included. Provide the number of policies and earned premium amounts for each during that period. Also estimate these distributions during the period when the rates are in effect.

(c) All information related to the derivation of premium trend factors contained in the filing shall be provided. This information should include at a minimum the following:

(i) All data reviewed and worksheets used;

(ii) A complete description of the methodology used to arrive at the selected factors;

(iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;

(iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

(v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(d) All available information on changes in construction that would affect the exposure to windstorm losses during the years on which the excess multiplier is based shall be provided.

(6) Limiting factor development and application. Information on the following items shall be provided:

(a) Limitations on losses included in the statistical data used in the filing;

(b) Limitations on the extent of the rate level change by coverage;

(c) Limitations on the extent of territorial rate changes;

(d) Any other limitations applied.

(7) Expenses.

(a) All information related to the derivation of expense provisions contained in the filing shall be provided. This following information shall be included:

(i) All data reviewed and worksheets used;

(ii) A complete description of the methodology used to arrive at the selected loading;

(iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;

(iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

(v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(b) Earned premium and unallocated loss adjustment expenses by coverage for each

of the latest five years shall be provided included in the filing.

(c) Number of claims by coverage and allocated loss adjustment expenses for each of the last five years shall also be included.

(d) For each of ten largest writers of a line or coverage in North Carolina, statements regarding any expense cutting activities undertaken in the last five years shall be provided.

(8) The percent rate change. The overall statewide rate change by coverage shall be shown as well as the amount of the change attributable to each of the following: loss experience, the trend factor, a change in expense provisions, law changes, a change in the tax provision, a change in the assessment provision, and other changes.

(9) Proposed rates. Proposed average rates for each coverage, coverage amount, form, and group shall be provided. (In filings involving a large number of possible rates, information on rating factors and their application may be substituted for the actual rates.)

(10) Investment earnings. Information on anticipated investment income is necessary to establish the provision for underwriting profit and contingencies in the rates.

(a) Information on the amount of investment income earned on loss, loss expense, and unearned premium reserves in relation to earned premium for a line or coverage in North Carolina shall be calculated for the latest two years and estimated for the current year and all years during which the proposed rates will be in effect. Calculations shall be provided in detail including the amount of the composite reserves of each type at the beginning and end of each of the specified years.

(b) Information on the estimated average length of time that elapses between the occurrence of an insured loss and its payment shall be provided by coverage. The average shall be a weighted average based on size of claim payments. Indicate how the length by coverage has changed over the last five years.

(c) To evaluate recent insurer profitability, composite information from the Annual Statement for all insurers writing those lines included in the filing in North Carolina shall be included. Provide the following information from the latest two Annual Statements in the same format and detail as the exhibits in individual company statements:

(i) Page 2 (Assets);
(ii) Page 3 (Liabilities, Surplus and Other Funds);
(iii) Page 4 (Underwriting and Investment Exhibit);
(iv) Exhibit 1 (Analysis of Assets).

(11) Identification and Certification of Statistical Plans.

(a) All statistical plans used or consulted in preparing this filing shall be identified. Also describe the data compiled by each plan.

(b) A certification that all the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation of each company's experience to the best of their knowledge shall also be provided.

(12) Investment Earnings on Capital and Surplus. Given the selected underwriting profit and contingencies loading(s) contained in the filing, indicate the resulting rate of return on equity capital, on total assets, and on assets assigned to insurance operations including consideration of investment income. Show the derivation of all factors used in producing the calculations. Provide justification that these rates of return are reasonable and fair.

(13) Level of Capital/Surplus Needed.

(a) Aggregate premium to surplus ratios for the latest three calendar years for all companies writing the coverages included in the filing in North Carolina shall be provided.

(b) Estimates of comparable ratios for the years during which the rates will be in effect shall also be provided.

(14) Other Information.

(a) All information on the various preliminary and intermediate steps taken in preparing the filing shall be included with it. This would include among other things, the following items:

(i) Agendas and minutes of the North Carolina Rate Bureau affecting the filing. Include a list of all attendees at these meetings, their titles, and their affiliations.

(ii) Agendas and minutes of meetings of the Insurance Services Offices affecting the filing explicitly or implicitly through the adoption of a countrywide procedure. Include a list of all attendees at these meetings, their titles, and their affiliations.

(iii) Correspondence between the above two entities or between an entity and its consultants affecting the filing.

- (iv) Contracts and agreements between the above two entities or between an entity and its consultants relating to the filing or its preparation.
- (v) Payments to the Insurance Services Office related to this filing and the prior one.
- (vi) Payments to other consultants (including lawyers, actuaries, and economists) related to this filing and the prior one.
- (b) All information related to the derivation of the profit and contingency loading(s) contained in the filing should be provided. The following information shall be included:
 - (i) All data reviewed and worksheets used;
 - (ii) A complete description of the methodology used to arrive at the selected loading;
 - (iii) A description of alternative methodologies used or considered for use by the Insurance Services Office in other states;
 - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
 - (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
- (15) Additional Information. The commissioner may require such other information as he deems necessary to constitute a proper rate filing.

Statutory Authority G.S. 58-9; 58-124.20(h).

.1106 DEVIATIONS FROM RATES OF THE NORTH CAROLINA RATE BUREAU

- (a) Filing Guidelines.
 - (1) All rate deviation filings must be made in triplicate.
 - (A) Send the original and one copy to the department.
 - (B) Send the second copy to the North Carolina Rate Bureau.
 - (2) A rate deviation shall be filed, modified, or withdrawn on an individual company basis even if the company is part of a group.
 - (3) All proposed rate deviations shall be expressed in terms of North Carolina Rate Bureau rates, either as percentages or dollar amounts.
 - (4) Filing requirements differ by type of deviation action:
 - (A) To introduce a deviation, see section (3).
 - (B) To modify a deviation, see section (4).

- (C) To withdraw a deviation, see section (5).
- (b) Application of Deviations.
 - (1) On approval of the introduction, modification, or withdrawal of one or more rate deviations, the department shall transmit to the company a letter of approval listing all the rate deviations in effect for that line and company. All deviations listed shall be applied to all eligible insureds and deviations not listed shall not be applied to any insured.
 - (2) Rate deviations remain in effect until modified or withdrawn.
 - (3) Modifications of existing rate deviations are permitted at any time.
 - (4) An unmodified rate deviation may be withdrawn only if both of the following conditions have been met:
 - (A) The deviation has been in effect for at least six months.
 - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
 - (5) A modified rate deviation may be withdrawn only if both of the following conditions have been met:
 - (A) The deviation has been in effect for at least six months since the date of the last modification.
 - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
- (c) Filings for new rate deviations. Filings for new deviations shall contain only the following information:
 - (1) A cover letter containing the following:
 - (A) Company name;
 - (B) Company NAIC number;
 - (C) Line of business involved;
 - (D) A brief descriptive sentence of each deviation to be introduced;
 - (E) Proposed effective date.
 - (2) A separate exception page for each proposed deviation (Do not submit manual pages.)
 - (3) A completed deviation questionnaire obtained from the Fire and Casualty Division.
 - (4) A completed operating profitability form obtained from the Fire and Casualty Division.
- (d) Filings for modifications of rate deviations. Filings for modifications of deviations shall contain only the following information:
 - (1) A cover letter containing the following:
 - (A) Company name;
 - (B) Company NAIC Number;

(C) Line of business involved;
(D) Department file number;
(E) A brief descriptive sentence on each of the deviations to be modified;
(F) A brief descriptive sentence on each of the unmodified deviations that remain in effect;
(G) Proposed effective date.

(2) Separate exception pages for all deviation that will be in effect as of the proposed effective date (Do not submit manual pages.)

(3) A completed deviation questionnaire obtained from the Fire and Casualty Division.

(4) A completed operating profitability form obtained from the Fire and Casualty Division.

(e) Filing letters for withdrawals of rate deviations. Filing letters for withdrawal shall contain only the following information:

(1) A cover letter including the following information:
(A) Company name;
(B) Company NAIC number;
(C) Line of business involved;
(D) Department file number;
(E) A brief descriptive sentence of each deviation to be withdrawn;
(F) Proposed effective date.

(2) A statement that the deviation has been in effect for at least six months.

(f) Deviation questionnaire. The deviation questionnaire shall contain the following information:

(1) Company name;
(2) Date of filing;
(3) Company NAIC number;
(4) Company file number;
(5) Line of insurance;
(6) Program title;
(7) Department file number, if applicable;
(8) Number of policies written in North Carolina for each of the last five years that would have been affected by the introduction, modification, or withdrawal of the deviation;

(9) Company's current percentage share of the North Carolina market for the line (in terms of premium);

(10) Percentage of the company's North Carolina book of business affected by the deviation (in terms of both premium and number of policies);

(11) Percentage of the company's countrywide book of business comprised of North Carolina policies affected by the deviation (in terms of both premium and number of policies);

(12) Aggregate premium change in dollars and percentage for North Carolina policyholders affected by the deviation;

(13) A list of states where the company has filed similar deviations. (Provide separate lists for approved and disapproved deviations);

(14) Eligibility requirements for the deviation;

(15) Restrictions on the application of the deviation;

(16) Company NAIC IRIS test results for the latest five years;

(17) Certification by a company official that the information supplied is complete and accurate;

(18) Such other information that the commissioner may require.

(g) Operating Profitability Form. The operating profitability form shall contain the following information on a company's North Carolina experience for the latest five years, for each year and in total:

(1) Net premiums written;
(2) Net premiums earned;
(3) Net losses incurred;
(4) Net loss adjustment expense incurred;
(5) Net acquisition expenses;
(6) Net general expenses;
(7) Net taxes, licenses and fees;
(8) Net underwriting gain or loss;
(9) Direct earned premium at current bureau rates;
(10) The ratio of calendar year incurred losses and loss adjustment expenses to direct earned premium at current manual rates;
(11) The ratio of annual loss trend to annual premium trend;
(12) The trend to bring the loss ratio to current cost level;
(13) Loss and loss adjustment expense ratio at current cost level;
(14) The ratio of incurred operating expense (other than loss adjustment expense) to direct earned premium at current manual rates;
(15) The ratio of investment income from North Carolina loss, loss adjustment expense, and unearned premium reserves to earned premium;
(16) Such other information as the commissioner may require.

Statutory Authority G.S. 58-25.1; 58-124.23 (a), (c).

TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Crime Control and Public Safety - Alcohol Law Enforcement Division intends to amend regulations cited as 14A NCAC 8A .0001 - .0002; 8H .0201 - .0207, .0301 - .0303, .0401 - .0405, .0501 - .0502, .0504, .0601 - .0606, .0701 - .0703, .0801 - .0803, .0901 - .0902, .1002, .1101 - .1104, .1201 - .1202, .1301 - .1302, .1401 - .1404, .1501 - .1502, .1504, .1601, .1603 - .1604, .1701 - .1705, .1801 - .1805, .1901 - .1903; 81 .0001 - .0002; 9H .0703; and repeal regulations cited as 14A NCAC 8H .0503, .1602.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 16, 1988 at The Library, Archdale Building, Raleigh, NC.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in written or oral form. Written statements not presented at the public hearing may be directed prior to May 16, 1988 to the Administrative Procedures Coordinator, Second Floor, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina or Post Office Box 27687, Raleigh, North Carolina 27611-7687.

CHAPTER 8 - ALCOHOL LAW ENFORCEMENT

SUBCHAPTER 8A - DEFINITIONS

.0001 DEFINITIONS TO APPLY TO THIS CHAPTER

The definitions listed in .0002 of this Subchapter shall apply to the words and phrases found in this Chapter. ~~Members~~ Employees shall be governed by these definitions whenever they appear in any alcohol law enforcement rule, regulation, order, policy or directive, or in the Alcohol Law Enforcement Manual.

Statutory Authority G.S. 18B-500; 143B-10.

.0002 DEFINITIONS

Definitions for this Chapter are as follows:

(1) ABC Commission--N.C. Alcoholic Beverage Control Commission established pursuant to Chapter 18B of the North Carolina General Statutes;

(2) ABC Hearing. An examination by a hearing officer or State ABC Commission for the purpose of determining whether a permit should be issued, suspended or revoked;

(3) (2) ABC Store. A retail establishment set up by a local ABC Board to sell alcoholic beverages to the public;

(4) (3) Agent. A duly authorized and sworn law enforcement employee of the ALE division; ALE agent;

(5) (4) Agent in Charge. An agent in charge of the Ale division or any organizational subdivision of the ALE division, or any ALE agent in charge of any special detail;

(6) (5) Alcohol Law Enforcement. The Alcohol Law Enforcement Division of the North Carolina Department of Crime Control and Public Safety, including all employees, both enforcement and civilian; ALE, ALE division;

(7) (6) Alcohol Violations Review Officer. An employee of the ALE division who reviews and approves or rejects all violations reports filed by ALE agents and submits approved violation reports to a hearing officer;

(8) (7) ALE. The Alcohol Law Enforcement Division of the North Carolina Department of Crime Control and Public Safety, including all employees, both enforcement and civilian; ALE division, alcohol law enforcement;

(9) (8) ALE Agent. A duly authorized and sworn law enforcement employee of the ALE division; agent; ~~member~~; employee;

(10) (9) ALE Division. The Alcohol Law Enforcement Division of the North Carolina Department of Crime Control and Public Safety, including all employees, both enforcement and civilian; ALE; alcohol law enforcement;

(11) (10) Alcohol Law Enforcement Order. An inclusive term which applies to the ALE manual, a directive, rule, regulation, general order, special order, administrative notice or written procedure;

(12) (11) Assistant supervisor. An agent who ranks below a supervisor and above an agent. He supervises agents, assists the supervisor and acts in the absence of the supervisor or when delegated specific authority by the supervisor;

(13) (12) Chain of Command. Official route of communication from the supervisor lowest in rank through intermediate supervisors to the highest appropriate supervisor, including the director, if appropriate; channels;

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(14) (13) Channels. Official route of communication from the supervisor lowest in rank through intermediate supervisors to the highest appropriate supervisor, including the director, if appropriate; chain of command;

(15) (14) Chapter 18B. The chapter of the North Carolina General Statutes which sets forth the majority of the state's statutes regulating the sale, possession, manufacture, transportation, use and consumption of alcoholic beverages;

(16) (15) Civilian Employees. Persons employed by the ALE and who do not have police powers;

(17) (16) Complaint. An expression of dissatisfaction made by a member of the public concerning the activities of a licensee or, when used in the disciplinary sense, an allegation by any person alleging improper conduct on the part of a member; an ALE employee;

(18) (17) Compulsory Leave Without Pay. Action taken in temporarily removing a member an employee from duty as a result of his violation of ALE policy, rules, regulations or directives, not to exceed three days;

(19) (18) County or Municipal ABC Agent or Officer. An employee of a local ABC Board who enforces state and local alcoholic beverage control laws or regulations within that county;

(20) (19) Department. The Department of Crime Control and Public Safety;

(21) (18) Deputy Director for Administration. One of two agents who shares the second in command position of the ALE division and who may act in the absence of the director, or when delegated specific authority by the director. This agent is in charge of administrative duties as provided by ALE policy, rules, regulations and directives; DDA;

(22) (21) Deputy Director for Operations. One of two agents who shares the second in command position of the ALE division and who may act in the absence of the director or when delegated specific authority by the director. His primary duties concern enforcement activities; DDO;

(23) (22) Detail. Members Agents of the ALE division grouped together for the accomplishment of a specified official mission;

(24) (23) Directive. A numbered, written order issued by the director which prescribes a policy governing the operation of the ALE division or which outlines procedures to be followed in performing a function or duty;

(25) (24) Director. The head of the ALE division; ~~of the Department of Crime Control and Public Safety;~~

(26) (25) Dismissal. An act which terminates the service of a member an employee without the member's employee's consent;

(27) (26) District. A subordinate unit of the state which encompasses one or more counties and is supervised by a district supervisor;

(28) (27) District Supervisor. The agent in charge of a district;

(29) (28) Duty Officer. Agent. The agent in charge in the absence of the supervisor or at any other time as designated by the director, deputy director, or district supervisor;

(30) (29) Employee. Any enforcement member or a civilian Anyone employed by the ALE division;

(31) Enforcement Member. Any employee of the ALE division who is a sworn law enforcement officer, agent, ALE agent, member;

(32) (30) Field Office. A city, a town, or a post office designated as an agent's base of operation;

(33) (31) Gift. Something that is bestowed voluntarily and without compensation--for example, money, tangible or intangible personal property, a loan, any service rendered, entertainment, or a promise, expressed or implied, to provide any of these; gratuity;

(34) (32) Gratuity. Something that is bestowed voluntarily and without compensation--for example, money, tangible or intangible personal property, a loan, any service rendered, entertainment, or a promise, expressed or implied, to provide any of these; gift;

(35) (33) Hearing Officer. An employee of the State Board of Alcoholic Control who reviews violation reports filed by ALE agents; hears statements from the affected permittee and/or his attorney, the ALE agent, witnesses and other affected parties; and makes findings of fact and recommendations to the ABC Board as to whether the permittee's permit should be suspended or revoked; also, one who holds hearings about whether a permit should be issued;

(36) (34) Illegal Order. An order issued by a superior agent which is not consistent with applicable laws;

(37) (35) Insubordination. Willfully disobeying any lawful order issued by a superior agent, or any disrespectful, mutinous, insolent, or abusive language or conduct directed toward a superior agent;

(38) (36) Length of Service. The length of time that a member an employee has been engaged in the actual performance of ALE duty; as an enforcement member;

(39) (37) License. A written or printed certificate which allows a person to engage in some phase of the liquor alcoholic beverage industry and which may be issued by the Secretary of Revenue, by a municipality, or by a county;

(40) (38) Local ABC Board. Any county or municipal board of alcoholic control established by state law;

(41) (39) Medical Services Director. The Patrol Medical Services Director appointed by the Secretary of Crime Control and Public Safety;

(42) Member. A duly authorized and sworn law enforcement employee of the ALE division; ALE agent, agent;

(43) (40) Military Leave. The period of time during which a member is granted leave from the ALE division when called to perform active military service;

(44) (41) Off Duty. Time during which a member an employee is authorized to be free of the responsibility of performing routine ALE duties;

(45) (42) Order. An instruction or directive, either written or oral, issued by superior agents to subordinates in the course of ALE duty;

(46) (43) Permit. A written or printed authorization to engage in some phase of the liquor alcoholic beverage industry which may be issued by the ABC Commission under the provisions of Chapter 18B of the N.C. General Statutes;

(47) (44) Permittee. An individual, partnership or corporation which has received a permit from the ABC Commission;

(48) (45) Policy. A duly adopted guiding principle or course of action designed to influence and determine decisions, actions, and procedures;

(49) (46) Probation. A 24 12 -month trial period in which a member's an agent's fitness for membership in the ALE division is tested. At the end of this period, the director evaluates a member the performance and determines whether he may continue as a member of the ALE division;

(50) (47) Probationary Member. Agent. Any member agent who has been employed by the ALE division for less than the 24 month probation probationary period; members agents are also subject to the provisions of Chapter 126 of the General Statutes of

North Carolina and pursuant thereto, do not become "permanent state employees" until such time as they have been continuously employed by the state for five years, the periods specified in G.S. 126(c).

(51) (48) Procedure. The officially established method for dealing with a given situation or performing a specific activity;

(52) (49) Recommendation. An investigator's supervisor's suggested course of action which is forwarded to the appropriate supervisor through the chain of command with a completed report of investigation;

(53) (50) Reprimand. A formal rebuke issued to a licensee by the ABC Commission or in the disciplinary sense, a level of disciplinary action taken against a member; an employee;

(54) (51) Resignation. Voluntary termination of service by a member an employee of the ALE division;

(55) (52) Retailer. An individual, partnership or corporation which has received a permit from the ABC Commission to engage in some phase of the retail liquor alcoholic beverage industry;

(56) (53) Retirement. Termination of active service of a member an employee with the number of years of creditable service required by statute to be eligible for retirement benefits or termination of service due to incapacitating disability;

(57) (54) Revocation of Permit. A cancellation of a permit by the ABC Commission;

(58) (55) Secretary. The Secretary of Crime Control and Public Safety;

(59) (56) Special Orders. A written order issued by the director relating to personnel matters;

(60) (57) State. The sovereign State of North Carolina;

(61) (58) Supervisor. An agent assigned supervisory control and direction of members;

(62) (59) Suspension. Action taken in removing a member from duty without pay in order to investigate an alleged violation of ALE policies, rules, regulations or directives; Suspension without pay may continue until a full and final resolution of the matter is reached;

(63) (60) Suspension of Permit. A temporary revocation of a permit by the ABC Commission;

(64) (61) Training Coordinator. An ALE agent whose primary responsibility concerns research and training relating to ALE activities;

(65) (62) Undercover Agent. An ALE agent who operates in secret in order covertly to

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discover violations of any ABC laws or regulations, violations of the Controlled Substances Act, or any other violations of the criminal laws of the state; ~~or who is on special assignment for the director, the secretary or the Governor;~~

(66) (63) Violation. The act of violating an ABC Commission rule or a provision of Chapter 18B of the N.C. General Statutes;

(67) (64) Violation Report. A report of violation written by an ALE agent;

(68) (65) Wholesaler. An individual, partnership or corporation which has received a permit from the ABC Commission to engage in some phase of the wholesale ~~liquor~~ alcoholic beverage industry.

Statutory Authority G.S. 18B-500; 143B-10.

SUBCHAPTER 8H - ADMINISTRATION: INVESTIGATION: AND ENFORCEMENT

SECTION .0200 - PERMIT: APPLICATIONS AND INVESTIGATIONS

.0201 ISSUANCE OF PERMIT APPLICATION

~~A member~~ An employee shall issue an appropriate ABC Permit Application. Applications upon the request of any person. ~~A member~~ Employees shall not refuse a request requests for an application applications even if the ~~member~~ employee knows the person or establishment does not meet the statutory or administrative requirements. ~~A member~~ Employees shall completely and fully explain to each applicant the information required by the form, the supporting documents required, and the type and nature of any fees required to be submitted with the application.

Statutory Authority G.S. 18B-500; 143B-10.

.0202 RECEIPT OF COMPLETED APPLICATIONS FROM ABC COMMISSION

Upon receiving an ABC Permit Application, the ABC Commission will date, record, and forward the application to ALE for investigation. The ~~member~~ agent assigned to the investigation shall log the date it was received from the ABC Commission on the application log. Upon completion of the investigation the ~~member~~ agent shall log the date on the application and forward the application, his typed investigative report, the investigation was completed in the application log and mail the application, typed investigative report, and all supporting documents to the ABC Commission. ~~A member~~ An

agent shall complete all investigations and forward all completed reports to the ABC Commission within three weeks of the date of receipt by the ABC Commission as indicated on the application form. In unusual circumstances, the ~~member~~ agent may request an extension of time to complete an investigation. ~~A member~~ An agent shall completely and thoroughly report every investigation to the ABC Commission on the appropriate ABC Commission form.

Statutory Authority G.S. 18B-500; 143B-10.

.0203 CONDUCT OF THE PERMIT INVESTIGATION: APPLICANTS

All permit applicants shall be interviewed. ~~and a personal history obtained.~~ Non-resident officers, directors or persons owning more than twenty-five percent of the stock of a corporation need not be personally interviewed, but the required information may be obtained by mail or telephone. The ~~member~~ agent shall attempt to determine each applicant's character and reputation in the community and shall make a complete criminal history check. He shall obtain out-of-state criminal checks when applicable. The ~~member~~ agent shall determine from the applicant whether or not he previously held a permit at any time and shall investigate the operating history of the applicant under any and all prior permits.

Statutory Authority G.S. 18B-500; 143B-10.

.0204 CONDUCT OF THE PERMIT INVESTIGATION: PREMISES

The ~~member~~ agent shall physically inspect the premises for which the applicant seeks a permit. He shall determine whether the applicant owns or leases the premises and shall sketch the physical layout of the facility to include parking lots or similar areas, if they are integral parts of the business. ~~The sketch shall include the approximate dimensions of the licensed area.~~ The final report shall include a copy of the sketch. The ~~member~~ agent shall physically inspect the premises and note such characteristics as required to determine the suitability of the location and as directed by the division. The ~~member~~ agent shall specifically note the proximity of the premises to schools, churches and other outlets. He shall determine if the location has previously housed a licensed outlet and, when applicable, determine the operating history of that outlet.

Statutory Authority G.S. 18B-500; 143B-10.

.0205 LOCAL OPINION FORMS

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As part of the investigation, when appropriate, the ~~member~~ agent shall serve, personally or by mail, designated local officials with local opinion forms. He shall inform each local official, at the time of service, the forms should be completed and returned to the ~~member~~ agent within 10 days or the ABC Commission will presume local consent to the permit. ~~The member~~ He shall make every reasonable effort to obtain the completed original form from the local official and return it with his investigative report.

Statutory Authority G.S. 18B-500; 143B-10.

.0206 SUBMISSION OF INVESTIGATIVE REPORT: INVESTIGATIONS

The ~~member~~ agent shall complete the investigative report and exhibits on such forms and in such a manner as directed by the director. ~~The member~~ He shall review the completed, typed report, as well as any and all attachments and exhibits. Upon determining that the report is correct and thorough, he shall sign and date the report and forward the complete package to the ABC Commission. ~~The member~~ He shall conduct additional investigations or complete a supplemental report when requested by the ABC Commission.

Statutory Authority G.S. 18B-500; 143B-10.

.0207 NOTIFICATION OF REJECTION: REVIEW OF INVESTIGATION

Upon rejection of a permit application, the ABC Commission will mail to the ~~member~~ agent a copy of the official notice of rejection. The ~~member~~ agent shall, upon receipt of the notice, review the application investigation to determine if the reasons for rejection as stated in the notice are consistent with the findings contained in the ~~member's~~ investigative report. Should the ~~member~~ he detect any discrepancies, he shall immediately contact his supervisor and inform him of the inconsistencies. The supervisor shall immediately inform the ABC Commission of the ~~member's~~ agent's findings.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .0300 - OUTLET OBSERVATIONS AND INSPECTIONS

.0301 PURPOSE

~~A member~~ An agent shall use the observation and inspection of licensed premises to acquaint himself with the permittee and his operations, to improve the permittee's knowledge of the ABC law and ABC Commission rules and to promote and ensure compliance with those laws and rules.

~~A member~~ An agent shall, through inspections, familiarize himself with every permittee, his employees, and with the outlet's operating practices.

Statutory Authority G.S. 18B-500; 143B-10.

.0302 FREQUENCY

~~A member~~ An agent shall physically visit each outlet in his assigned area at least once every 12 months. ~~A member~~ He shall inspect and observe more frequently outlets which generate complaints or which have histories of repeated law or rule violations occurring on or about the premises. He shall make a repeat inspection of outlets in which earlier inspections revealed possible unlawful conduct or violations of ABC Commission rules.

Statutory Authority G.S. 18B-500; 143B-10.

.0303 TYPES OF INSPECTIONS AND OBSERVATIONS

(a) Routine Outlet Checks. A routine outlet check is an informal visit with the permittee and his employees and an observation of the premises and its operations. ~~A member~~ An agent shall perform a routine outlet check on every outlet in his assigned area at least once every 12 months. ~~A member~~ He shall visit outlets with violation histories on a more frequent basis. The routine outlet check shall familiarize the ~~member~~ agent with the permittee, his employees, and his operating practices. ~~A member~~ An agent shall use this opportunity to familiarize the permittee and his employees with Chapter 18B and ABC Commission rules. ~~A member~~ He shall observe the premises' operations and its patrons and shall take appropriate enforcement action when observing law or rule violations. ~~A member~~ He shall conduct routine outlet checks in accordance with ALE directives.

(b) Written Inspections. A written inspection is a formal, documented examination of a permittee's books, records, receipts and invoices, as well as a documented physical inspection of the premises and its operations. ~~A member~~ An agent shall complete the appropriate written inspection report, obtain the owner or operator's signature on the completed form, and leave a copy with him. The original and additional copies shall be processed in accordance with ALE directives. ~~A member~~ An agent shall conduct a written inspection of each outlet in ~~his~~ ~~their~~ assigned area at least once every 12 months. ~~A member~~ He may conduct additional written inspections when he has reason to believe that discrepancies in the permittee's books, records, invoices, receipts, advertising, premises or oper-

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ations may exist, or upon order of the district supervisor. ~~A member~~ He shall take appropriate enforcement action upon discovering law or ABC Commission rule violations.

(c) Outlet Surveillance. An outlet surveillance is an observation of a licensed outlet without the knowledge of the permittee or his employees. ~~A member~~ An agent shall perform outlet surveillance when he has reason to believe violations of law or ABC Commission rules are occurring and these violations would not be detected in a routine outlet check or in the course of a written inspection. ~~A member~~ An agent shall carry out surveillance as required in the performance of his duties and consistent with ALE directives. ~~A member~~ He shall make and file a written report of every outlet surveillance conducted (AL-39 if no violations or unusual discrepancies noted). ~~A member~~ He shall take appropriate enforcement action upon observing violations of Chapter 18B or ABC Board rules consistent with the purpose and intent of the surveillance.

(d) Covert Inspection. A covert inspection is an observation carried out on or about the licensed premises during which the identity and position of the ~~member~~ agent is not disclosed or known to the permittee, his employees, and patrons. ~~A member~~ An agent shall conduct a covert inspection when he has reasons to believe a permittee, his employees, or patrons are engaged in violations of the criminal laws or ABC Commission rules and ~~the member~~ he cannot detect such violations or gather sufficient evidence thereof in any other manner. ~~A member~~ An agent shall take appropriate enforcement action upon observing violations of the criminal law or ABC Commission rules consistent with ALE rules and directives and consistent with the purpose and intent of the inspection. Any covert inspection requiring an agent to travel outside his district of assignment shall be handled administratively as an undercover operation in accordance with ALE directives and policies.

(e) Overt Inspections. An overt inspection is an outlet inspection conducted during the permittee's business hours in which the ~~member~~ agent identifies himself to the permittee, his employees, and patrons and informs them he is conducting an inspection. ~~A member~~ An agent shall conduct overt inspections when he has knowledge of repeated violations of criminal laws or ABC Commission rules involving permittee-patron or patron-patron activity at a particular location or when, due to repeated, documented incidents at the location, the ~~member~~ agent has reason to believe such activity is occurring. ~~A member~~ An agent shall conduct overt inspections consistent with ALE rules and directives. Upon

observing violations of the criminal law or ABC Commission rules, a member shall take immediate enforcement action consistent with ALE rules and directives.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .0400 - ENFORCEMENT ACTIONS

.0401 POLICY

Upon learning facts sufficient to establish probable cause to believe a violation of Chapter 18B or ABC Commission rules has occurred or is occurring, ~~a member~~ an agent shall take immediate enforcement action as described in this Section. ~~A member~~ An agent need not take immediate enforcement action when to do so would jeopardize the safety of individuals or jeopardize the course of an investigation. ~~A member~~ An agent shall take no enforcement action which he knows or has reason to believe is unlawful or unauthorized.

Statutory Authority G.S. 18B-500; 143B-10.

.0402 ORAL WARNING

(a) Definition. An oral warning is a verbal communication to a permittee, pointing out to him a possible violation of Chapter 18B or a violation of ABC Commission rules (4 NCAC 2).

(b) Contents. The oral warning shall be directed to the permittee and shall:

- (1) indicate the date, time, and location of the agent's observation;
- (2) contain a brief statement of the facts setting forth the nature of the incident;
- (3) indicate which statute or rule may have been fringed;
- (4) state any action which the permittee should take to correct the alleged violation; and
- (5) indicate that repeated conduct of this nature could result in more severe action.

(c) When Issued. ~~A member~~ An agent shall issue an oral warning upon observation of an irregularity or an unintentional or technical minor violation of Chapter 18B or ABC Commission rules.

(d) Method of Issuance. Upon learning sufficient facts to establish a reasonable belief a violation occurred, ~~a member~~ an agent shall politely, but firmly, inform the permittee as provided in (b) of this Regulation and make a notation in his outlet file (AL-39) of the information set forth in (b) of this Regulation together with the fact that he issued the oral warning.

Statutory Authority G.S. 18B-500; 143B-10.

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.0403 WRITTEN WARNING

(a) Definition. A written warning is a written communication to a permittee advising him he is allowing or engaging in a possible violation of Chapter 18B or of ABC Commission rules (4 NCAC 2).

(b) Contents. The written warning shall be directed to the permittee and shall:

- (1) indicate the date, time, and location of the agent's observation;
- (2) contain a brief statement of the facts setting forth the nature of the incident;
- (3) indicate which statute or rule may have been fringed;
- (4) state any action which the permittee ~~should might~~ take to ~~sure correct~~ the ~~alleged violation, and problem.~~
- (5) ~~indicate that further violations of this nature could result in more severe action.~~

(c) When Issued. ~~A member An agent~~ shall issue a written warning upon observing a condition or situation which prompted an earlier oral warning or when a ~~member an agent~~ observes an intentional but technical violation of Chapter 18B or ABC Commission rules concerning which the permittee had not been earlier warned.

(d) Method of Issuance. Upon learning facts sufficient to establish a reasonable belief a violation has occurred, ~~a member an agent~~ shall inform the permittee that he has detected a violation or has information from specified witnesses a violation occurred and he may then immediately serve a written warning upon the permittee. If the written warning is not served at that time, the permittee should be advised a written warning will be issued. As quickly as possible thereafter, but no later than seven working days following the above discussion with the permittee, the ~~member agent~~ shall complete a written warning in triplicate and serve upon the permittee. In any case, the permittee shall acknowledge receipt of the warning by signing the original and copies. The permittee shall retain one copy, the ABC Commission shall receive the original and the ~~member agent~~ shall retain one copy for his files.

(e) ~~A member An agent~~ must be prepared to testify to all matters set forth in the written warning.

Statutory Authority G.S. 18B-500; 143B-10.

.0404 VIOLATION REPORT

(a) Definition. A violation report is a written report by ~~a member an agent~~ made to the ABC Commission alleging a specific violation of

Chapter 18B or ABC Commission rules which occurred in a licensed outlet at a specific date and time.

(b) Contents. The violation report shall indicate:

- (1) the name and address of the permittee, any trade name used;
- (2) the type of permits held;
- (3) the specific violation charged and the date and time each occurred;
- (4) the name of the person in charge of the premises at the time of the violation;
- (5) the name and address of any witnesses for whom subpoenas should be issued;
- (6) a notation as to whether previous ~~complaints warnings and/or violations~~ have been ~~received filed~~ against the ~~particular~~ permittee;
- (7) a narrative report of the facts surrounding the alleged violations; and
- (8) the ~~member's~~ agent's signature and date of the report.

(c) When Issued. ~~A member An agent~~ shall complete and submit a violation report to his supervisor when he observes or has probable cause to believe a permittee has committed a definite, clear-cut and substantial violation of Chapter 18B or ABC Commission rules, or when ~~a member an agent~~ observes an uncorrected violation by a permittee for which a written warning had been previously issued.

(d) Method of Issuance. ~~A member An agent~~ shall inform the permittee or person in apparent control of the premises that he has ~~probable cause reason~~ to believe the permittee or his employee has committed a definite, clear-cut and substantial violation of Chapter 18B or ABC Commission rules and that the ~~member agent~~ will submit a violation report. The ~~member agent~~ shall inform the permittee or person in control of the nature and circumstances surrounding the violation and the applicable statute or rule violated. ~~A member shall submit the violation report to his supervisor within seven working days following his determination that a violation has occurred. He shall submit the violation report in sufficient time to reach headquarters within 12 working days of the date the violation occurred. (Working days are Monday - Friday and the violation date does not count in counting 12 days.)~~ Violation reports shall be processed as provided in Section .0500 of this Subchapter.

Statutory Authority G.S. 18B-500; 143B-10.

.0405 CITATION AND ARREST

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(a) Definition. A citation is a directive issued by a law enforcement officer that a person appear in court and answer criminal charges.

(b) Contents. The citation must:

- (1) identify the crime charged, including the date, and, when relevant, identify the property and other persons involved;
- (2) contain the name and address of the person cited or other identification if that cannot be ascertained;
- (3) identify the officer issuing the citation;
- (4) cite the person to whom issued to appear in a designated court at a designated time and date; and
- (5) the date and the signature of the member, agent as well as the signature of the person cited.

(c) When Issued. A member An agent shall issue a citation or make an arrest for definite, clear-cut and substantial violations of Chapter 18B. When members agents cite a permittee, they shall also submit a violation report as provided in Regulation .0404 in this Section.

(d) Method of Issuance. A member Agents shall issue citations or make arrests as herein provided and consistent with Chapter 15A of the General Statutes and ALE directives.

Statutory Authority G.S. 18B-500; 143B-10; 15A-302.

SECTION .0500 - VIOLATION REPORT PROCESSING

.0501 REVIEW BY DISTRICT SUPERVISOR

(a) A member An agent shall submit completed violation reports to the district supervisor. The district supervisor shall review the report and determine that it is free from technical errors and that the member's agent's investigation is thorough and complete. The supervisor shall note any technical errors in the report or indicate areas requiring further investigation or elaboration and return the report to the member agent. A member The agent shall make immediate corrections, modifications, or additional investigations and resubmit the report to the supervisor.

(b) Upon receiving a technically complete, correct, and thorough violation report, the supervisor shall review the entire file. If he determines that the report established probable cause to believe that a definite, clear-cut and substantial violation occurred and is set forth, he shall so indicate by dating and signing the report and shall immediately forward it to the director. If the supervisor determines that the report does not establish probable cause to believe a definite, clear-cut and substantial violation has occurred,

he shall return the report to the member agent and direct him to take lesser or no enforcement action, as the case may be.

Statutory Authority G.S. 18B-500; 143B-10.

.0502 REVIEW BY DIRECTOR: FORWARD TO REVIEW OFFICER

(a) The director shall review violation reports submitted by the district supervisor and determine that the report is free from technical errors and that the member's agent's investigation is thorough and complete. The director shall note any technical errors in the report or indicate areas requiring further investigation or elaboration and return it, with his comments, to the district supervisor. The district supervisor shall immediately order the investigating member agent or other members agents to make any corrections, modifications, or additional investigations and resubmit the report to the director.

(b) Upon receiving a technically complete, correct, and thorough violation report, the director shall review the report. If the director determines a report does not establish probable cause to believe that a definite, clear-cut and substantial violation has occurred, he shall return the report to the district supervisor and direct him to order lesser or no enforcement action, as the case may be. If the director determines the report establishes probable cause to believe a definite, clear-cut and substantial violation has occurred and the report contains sufficient information to justify ABC Commission action, he shall so indicate by dating and initialing the report and shall immediately forward it to the alcohol violations review officer, ABC Commission.

Statutory Authority G.S. 18B-500; 143B-10.

.0503 REVIEW BY THE ALCOHOL VIOLATIONS REVIEW OFFICER (REPEALED)

Statutory Authority G.S. 18B-500; 143B-10.

.0504 NOTICE CONCERNING HEARING: REVIEW OF INVESTIGATION

Upon receipt of an official notice of hearing or summary suspension or revocation order from the ABC Commission arising from a violation report, a member an agent shall review his investigative report to determine the action is consistent with the findings and facts contained in the member's agent's investigative report. Should the member agent detect any discrepancies, he shall immediately contact his supervisor and inform him of the inconsistencies. The su-

pervisor shall immediately inform the ABC Commission of the member's agent's findings.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .0600 - OAH HEARINGS AND APPEALS

.0601 SCHEDULING HEARINGS

(a) A member shall provide his supervisor with a schedule of vacation days, training sessions, or other days on which he is unavailable for ABC Commission hearings due to required activities. A member shall promptly notify his supervisor of any changes in his schedule. Supervisors shall forward these schedules to the director who shall furnish the information to the ABC Commission. The commission may contact a member directly if there is any question or conflict in a member's schedule.

(b) The ABC Commission will notify a member an agent of hearing dates, times and locations. A member An agent shall direct any questions or problems concerning hearing schedules to the commission through his supervisor.

Statutory Authority G.S. 18B-500; 143B-10.

.0602 OFFICIAL NOTICE OF HEARING

The ABC Commission will forward an official notice of hearing to the member agent. Upon receipt of the official notice of hearing, a member the agent shall review his files to be certain the notice is correct. and subpoenas have been or will be issued for all necessary witnesses. A member He shall report any discrepancies to his supervisor who shall immediately notify the ABC Commission appropriate ABC legal specialist.

Statutory Authority G.S. 18B-500; 143B-10.

.0603 SERVICE OF SUBPOENAS

A member shall promptly serve the official notice of hearing on the person named. Both the member and the person so served shall, at the time of service, sign and date the original and all copies. A member shall leave the original with the person named, retain one copy for his files and forward the remaining copy to his district office for forwarding to the ABC Commission. A member shall promptly serve any subpoenas in connection with the hearing.

OAH subpoenas will be mailed to permittees and other witnesses, by certified mail, return receipt requested. If the subpoena is returned undelivered, OAH will request an agent to serve the subpoena personally.

In these cases the subpoena should be served promptly. Both the agent and the person so

served shall at the time of service sign and date the original and all copies. The original shall be left with the person subpoenaed. One copy shall be retained for ALE files and the remaining copies shall be forwarded to the ALE District Office for forwarding to the ABC Commission.

Statutory Authority G.S. 18B-500; 143B-10.

.0604 APPEARANCE AT HEARINGS AND APPEALS

Prior to hearing, a member an agent shall carefully review his investigative file, exhibits, and reports. A member An agent shall appear at the designated hearing time and location fully prepared to testify concerning any portion or all of his investigation. A member He shall testify fully and completely. If for any reason a member he is delayed or prevented from attending a hearing, he shall promptly notify the hearing officer and his supervisor, his supervisor and the appropriate ABC legal specialist.

Statutory Authority G.S. 18B-500; 143B-10.

.0605 NOTIFICATION OF FULL COMMISSION ACTION

Subsequent to the hearing, a member an agent will be notified of the date the ABC Commission will consider the hearing officer's recommendations in the particular matter. A member An agent shall so notify local officials who expressed interest in the particular matter of the scheduled date, time, and location of the ABC Commission meeting.

Statutory Authority G.S. 18B-500; 143B-10.

.0606 ADDITIONAL TESTIMONY: APPEALS

A member An agent shall retain all his investigative files pending a formal resolution of the matter through and including the Appellate Division of the General Court of Justice. A member He shall honor all requests by the ABC Commission for testimony before the hearing officer, Office of Administrative Hearings, the ABC Commission or in superior court when made by the ABC Commission through the district supervisor. Requests from the ABC Commission directly to the member agent shall be discussed with the district supervisor. A member He shall not appear and give testimony at an applicant's or permittee's request except upon a duly served subpoena. When served with such subpoena, a member an agent shall immediately notify his district supervisor who shall notify the ABC Commission.

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Statutory Authority G.S. 18B-500; 143B-10.

SECTION .0700 - ADMINISTRATIVE DUTIES

.0701 DELIVERING PERMITS

(a) A member shall promptly deliver all newly issued permits to permittees within 48 hours of receipt from the ABC Commission. Exceptions to this requirement are allowed if the applicant is operating with a temporary permit which authorizes the activity which the new permit authorizes and failure to deliver the new permit will not cause a discontinuance or disruption of business. Good judgement should be exercised in connection with the delivery of permits. If manpower limitations, fiscal restraints or the press of other necessary and vital work, interferes with the delivery of permits, the permittee should be immediately contacted and other reasonable methods of delivering the permit worked out between the permittee and the member. Upon delivery or return of a permit, a member shall obtain the permittee's signature on the permit receipt form. A member shall forward one copy of the receipt to the ABC Commission, one to the appropriate local authorities, and retain one for his files. At the time of delivery, a member shall clearly explain ABC Commission rules to the permittee. A member shall return suspended permits to the permittee on the morning following the last day of suspension. Newly issued permits will be mailed by the ABC Commission directly to the permittee at the mailing address provided by the permittee. During the application investigation process, the investigating agent shall advise the permit applicant the permit will be mailed to the mailing address which he provides. The permit applicant shall be advised if the mailing address is incorrect the receipt of the permit will be delayed. Permits returned to the ABC Commission for improper mailing address will be forwarded to the appropriate district for hand delivery. These permits shall be delivered by ALE to the permittee no later than the end of business of the following business day. Any hand delivery of permits will require the completion of the appropriate permit receipt form.

(b) Upon delivery or return of a suspended permit, an agent shall obtain the permittee's signature on the permit receipt form. An agent shall forward one copy of the receipt to the ABC Commission, one to the appropriate local authorities, and retain one for his files. At the time of delivery, an agent shall clearly explain ABC Commission rules to the permittee or appropriate employee. An agent shall return suspended

permits to the permittee on the morning following the last day of suspension.

(b) (c) In the case of the return of a suspended permit, a member an agent shall examine all alcoholic beverages in an effort to determine whether or not any sales have occurred during the period of suspension. Appropriate enforcement action should be taken if evidence is developed indicating sales were made during the course of the suspension.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .0800 - COMMUNICATIONS WITH ABC STAFF

.0801 COMMUNICATIONS WITH ABC

Routine or nonexpedite communications between a member an agent and the ABC Commission staff shall be channeled through district supervisors. ABC Commission staff may contact a member agents directly to clarify minor, routine questions.

Statutory Authority G.S. 18B-500; 143B-10.

.0803 ADVICE

A member An agent who needs or wants advice on the legal ramifications of a particular situation shall first discuss his or her question with the supervisor. If the supervisor needs additional information, he may contact a deputy director, the director, or the ABC Commission staff. if desirable.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1000 - DRUG ACTIVITIES

.1002 ASSISTING OTHER AGENCIES

Members Agents will assist other state and local agencies with drug-related offenses upon request.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1100 - OTHER ENFORCEMENT ACTIONS

.1101 ARREST POLICY

(a) A member An agent shall issue citations or make arrests only for definite, clear-cut and substantial violations. A member Agents shall not issue citations nor make arrests for frivolous, technical, or borderline violations. Factors such as race, sex, economic status, or familial, political or fraternal affiliation shall not influence a member an agent in any manner whatsoever.

(b) The member agent shall issue the pink copy of the North Carolina Uniform Citation for all

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definite, clear-cut and substantial violations. If the ~~member~~ agent has reason to believe that the offender is not likely to submit to the jurisdiction of the court as cited or if the offense is one which requires arrest, he shall arrest the offender and shall, without unreasonable delay, take him before a judicial official of the General Court of Justice as defined in N.C. General Statutes Chapter 15A and as provided in Regulation .1103 of this Section.

(c) Upon arrest, the ~~member~~ agent shall, without unnecessary delay, advise the offender of his right to communicate with counsel, family and friends and must allow him reasonable time and opportunity to do so.

(d) A ~~member~~ An agent shall inform every accused person of the specific law which he is charged to have violated. If facts are subsequently discovered which require additional charges to be filed, the offender shall be informed of the additional charges prior to trial time.

Statutory Authority G.S. 18B-500; 143B-10; 15A-501.

.1102 CITATIONS

A ~~member~~ An agent shall appear before a judicial official of the General Court of Justice as soon as practicable following the preparation of the North Carolina Uniform Citation to have it validated. No more than two charges shall be placed on one North Carolina Uniform Citation, only one of which shall be preprinted violation. When three or more charges are brought against a person, additional North Carolina Uniform Citations shall be prepared.

Statutory Authority G.S. 18B-500; 143B-10.

.1103 BAIL BOND

(a) When a person is arrested for an offense, the person shall be taken without undue delay to a judicial official of the General Court of Justice where a warrant shall be prepared according to law and served on the individual. Bond, if any, shall be set by the judicial official. No money, security, bail bond, bail bond card or other articles of value shall be accepted by ~~members~~ agents.

(b) When a ~~member~~ an agent cites an offender to appear in court, he should cooperate with the offender in giving appropriate directions to the appropriate court seat and should in no case accept any money, bail bond, bail bond card, securities or other articles of value from the offender.

Statutory Authority G.S. 15A-541; 18B-500; 143B-10.

.1104 OPERATOR'S LICENSE TO REMAIN IN DRIVER'S POSSESSION

When an arrested person is allowed to drive his vehicle to a judicial official's office, he should have in his possession both his operator's license and the registration card for the vehicle he is operating. At no time shall the ~~member~~ agent escorting an arrested person keep these items in his possession while allowing an arrested person to drive his vehicle to the judicial official's office. However, if the operator's license is fraudulent or illegally altered, it should be retained by the agent as evidence of an additional crime.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1200 - CIVIL DISTURBANCES

.1201 REQUEST FOR ASSISTANCE

(a) In the event state assistance is deemed necessary by local officials to assist with riots, mob violence or other civil disturbances, local government officials should contact the director, deputy directors, district supervisors, or any available ~~member~~ agent. Local officials should state the nature of the emergency and the need for state assistance. The ~~member~~ agent shall immediately notify the director.

(b) If time will permit, a ~~member~~ an agent should be immediately assigned to the scene to assess the situation and to inform the director or his designee as to the existing situation and as to assistance needed.

(c) The ~~member~~ agent assigned to assess the situation shall ascertain the following:

- (1) whether local authorities have utilized all of their own forces and are unable to control the situation, or
- (2) whether control of the situation is beyond the capabilities of the local authorities, or
- (3) whether local authorities are taking appropriate action.

Statutory Authority G.S. 18B-500; 143B-10.

.1202 COMMITMENT OF FORCES

(a) Only the director or his designated representative shall authorize the actual commitment of ALE forces to assist local officials with civil disturbances after obtaining permission of the secretary, his representative or the Governor. Provided, however, that pending instructions from ALE headquarters, the ranking agent on the scene shall have the authority to temporarily commit such forces as are necessary to control an emergency situation where it reasonably ap-

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pears that the lives of citizens are endangered or the destruction of public or private property is threatened.

(b) ALE forces will work under the control of the district supervisor for the affected area, and ~~members~~ agents will assist in coordinating activities of all ALE and local official agencies involved. Any unlawful or unauthorized act on the part of any ~~member~~ agent will not be excusable on the grounds that it was the result of an order or request received from a local officer or civilian official.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1300 - WRECKER SERVICE

.1301 IMPARTIAL USE OF SERVICES

~~Members~~ Agents shall be absolutely impartial in using private wrecker services. ~~Members~~ Agents shall, whenever possible and practicable, dispatch the wrecker service requested by the motorist requiring such services.

Statutory Authority G.S. 18B-500; 143B-10.

.1302 ROTATION OF WRECKER REQUESTS

(a) When a motorist does not request a particular wrecker service, ~~members~~ an agent shall inform the local State Highway Patrol telecommunicator as to the person making the request and shall inform the telecommunicator the person has no preference as to wrecker service. Patrol telecommunicators maintain a wrecker service log on which private business concerns providing dependable, 24-hour wrecker service may be listed at their request, provided they conform with the laws governing the operation of wreckers. Telecommunicators shall be responsible for assuring that each service is called on a regular and equal rotating basis, unless special circumstances require a deviation from the rotation policy, as described in Subdivisions (b) and (c) of this Regulation.

(b) ~~Members~~ An agent shall not be required to call wreckers requested by motorists or required by the rotation log, but shall instead call the nearest available wrecker service, when an emergency exists (for example, when traffic congestion is a major problem, when persons are pinned in the wreckage, when danger of fire or explosion is present, or when other emergency situations exist).

(c) ~~Members~~ An agent shall not be required to call wreckers requested by motorists or required by the rotation log when special storage facilities are required for seized or impounded vehicles.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1400 - ALE ESCORTS AND RELAYS

.1401 ESCORTING EMERGENCY VEHICLES

~~Members~~ Agents shall not escort ambulances or other emergency vehicles unless special circumstances require. Exceptions may be made when a driver of an emergency vehicle cannot reach a hospital or other destination without assistance.

Statutory Authority G.S. 18B-500; 143B-10.

.1402 ESCORTING PRIVATE VEHICLES

~~Members~~ Agents shall not escort private vehicles making emergency runs unless special circumstances require.

Statutory Authority G.S. 18B-500; 143B-10.

.1403 ESCORTING FUNERAL PROCESSIONS

~~Members~~ Agents shall not escort funeral processions without authorization from a supervisor.

Statutory Authority G.S. 18B-500; 143B-10.

.1404 EMERGENCY MEDICAL RELAYS

Emergency medical relays may be made by ~~members~~ an agent whenever an actual emergency situation exists. The procedures listed in Subsections (1) and (2) of this Rule shall be followed:

- (1) Emergency relays will be authorized only when there is imminent danger of death or additional injury to the person being treated and at the request of the State Highway Patrol.
- (2) An emergency relay may be authorized only when there is no alternate means of transportation available which could as effectively perform the service.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1500 - USE OF ALE CARS AND AIRCRAFT

.1501 WHO MAY DRIVE

Only the persons listed in Subsections (1) through (5) of this Rule are authorized to drive ALE cars:

- (1) ~~enforcement~~ members agents while on duty;
- (2) any other sworn law enforcement officer while assisting a ~~member~~ an agent on duty;
- (3) a mechanic while road testing a vehicle or while delivering a vehicle to a ~~member~~ an agent or to a garage;

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- (4) a civilian while transporting a member or agent who is incapacitated by illness or injury to a hospital;
- (5) non-law enforcement ALE employees when authorized by a district supervisor, a deputy director, or the director.

Statutory Authority G.S. 18B-500; 143B-10.

.1502 UNAUTHORIZED PASSENGERS

~~Members~~ Employees shall not transport unauthorized persons in ALE vehicles. Authorized persons may be transported when circumstances require. For purposes of this Regulation, authorized persons shall include accident victims, stranded motorists, witnesses, officers of the court, prisoners or other persons when required in line of duty. When members agents are alone and must transport authorized females, the member agent shall follow the same procedure as directed in transporting female prisoners, 8H-1704. Other persons may be authorized by a district supervisor, a deputy director, or the director. Persons authorized by a district supervisor or higher authority shall be required to sign Release Form AL-32, which should be forwarded to ALE headquarters.

Statutory Authority G.S. 18B-500; 143B-10.

.1504 USE OF AIRCRAFT

~~Members~~ Agents shall not use private or state-owned aircraft in performing ALE official functions, whether on or off duty, without first obtaining approval of the director or his designated representative, a deputy director in his absence.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1600 - USE OF PHYSICAL FORCE: FIREARMS

.1601 USE OF FORCE

~~Members~~ Agents shall use physical force in arrest and custody situations in strict conformance with the United States Constitution and the Constitution and laws of North Carolina [General Statute 15A-401(d)(1)]. as stated in G.S. 15A-401.

Statutory Authority G.S. 18B-500; 143B-10.

.1602 LIMITATIONS ON THE USE OF DEADLY PHYSICAL FORCE (REPEALED)

Statutory Authority G.S. 18B-500; 143B-10.

.1603 FIREARMS PROCEDURES

~~Members~~ Agents shall be governed by the following in the use of firearms:

- (1) ~~Members~~ Agents shall use only ALE-issued ammunition in ALE-issued firearms while performing enforcement duties.
- (2) ~~Members~~ Agents shall never fire warning shots.
- (3) ~~Members~~ shall not shoot at a fleeing misdemeanant.
- (4) Members are authorized to use deadly force when necessary to prevent the escape of a fleeing felon, when the person fleeing is positively identified as a dangerous felon; the felon must be dangerous to human life while fleeing, and the member must be able to fire without danger to other persons.
- (5) Members may fire at dangerous fleeing felons only when no other means of capture or arrest are reasonably available.
- (6) Members are authorized to use deadly force to prevent a felony dangerous to human life. Such force may be used only when other available means cannot prevent the felony.
- (7) (3) ~~Members~~ Agents shall not permit any person other than another member agent to use an ALE firearm.
- (8) (4) ~~Members~~ Agents who discharge any firearm while on duty, either intentionally or accidentally, shall file a written report to the director through official channels. This requirement shall not apply to members agents engaged in firearms practice.
- (9) (5) ~~Members~~ Agents shall not remove sidearms from holsters except for authorized use in accordance with this Section, for inspection by a superior officer, or for other authorized purposes.

Statutory Authority G.S. 18B-500; 143B-10.

.1604 INVESTIGATION AND REPORTING OF FIREARMS INCIDENT

(a) A member An agent shall immediately report to his immediate supervisor every use of a firearm in the performance of his duty not related to training. The supervisor shall carefully examine all the facts and circumstances surrounding the incident and determine compliance with ALE rules, directives, and procedures. A full written report of the incident and investigation shall be sent through channels to the director.

(b) A member An agent involved in a shooting incident which is intentional or which results in injury or property damage shall be placed on leave but will be allowed to take annual or sick leave pending a preliminary investigation by his district supervisor. This preliminary investigation shall be completed within 48 hours. If the

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preliminary investigation discloses any irregularities regarding state or federal law or ALE policy, the member shall be suspended as provided in Regulation .202 of Subchapter 8D. If the investigation does not disclose any irregularities, the ~~member~~ agent shall return to duty and shall be credited for any annual leave taken or reimbursed for pay lost during the preliminary investigation.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1700 - PERSONS IN CUSTODY

.1701 SEARCH FOR WEAPONS: MALE PRISONERS

~~Members Agents~~ shall search all male prisoners and take possession of all weapons and evidence. ~~Members Agents~~ shall not conduct strip searches unless articulable facts exist indicating items subject to seizure may be found only through such a search. Search of body cavities is prohibited unless a search warrant authorizing such a search is obtained. Strip searches shall not be conducted without approval of a ~~member's~~ an agent's assistant supervisor or district supervisor. Strip and body cavity searches of male prisoners shall be made only by male ~~members~~ agents with a male witness. If practical, body cavity search shall be made in presence of a physician or medical technician.

Statutory Authority G.S. 18B-500; 143B-10.

.1702 SEARCH OF FEMALE PRISONERS

(a) ~~Members Agents~~ shall search female prisoners only when an immediate search is necessary to assure the safety of the prisoner or others, or to preserve evidence which might otherwise be destroyed.

(b) Searches made under such conditions shall be made with all possible regard for decency and, if possible, a witness should be present.

(c) ~~Members Agents~~ shall not conduct strip searches unless articulable facts exist indicating items subject to seizure may be found only through such a search. Search of body cavities is prohibited unless a search warrant authorizing such a search is obtained. Strip searches shall not be conducted without approval of a ~~member's~~ an agent's assistant supervisor or district supervisor. Strip and body cavity searches of female prisoners shall be made only by female ~~members~~ agents with a female witness. If practical, body cavity search shall be made in presence of a physician or medical technician.

Statutory Authority G.S. 18B-500; 143B-10.

.1703 TRANSPORTING PRISONERS

~~Members Agents~~ shall transport prisoners to an appropriate place of detention without delay and shall not accompany the prisoner to the prisoner's place of residence without the consent of a superior officer.

Statutory Authority G.S. 18B-500; 143B-10.

.1704 TRANSPORTING FEMALE PRISONERS

(a) ~~Members Agents~~ shall not transport female prisoners without a third person being present throughout the trip. Exceptions may be made whenever it is impossible or impractical to have a third person present.

(b) Whenever it is necessary to transport a female prisoner without the presence of a third person, ~~members agents~~ shall:

- (1) Notify the State Highway Patrol telecommunicator on duty of the time of arrest, the odometer reading, place of intended incarceration and the estimated time of arrival at that location.
- (2) Upon arrival at the destination the ~~member~~ agent shall notify the patrol telecommunicator of the time and the odometer reading.

Statutory Authority G.S. 18B-500; 143B-10.

.1705 PROPERTY OF PRISONERS

~~Members Agents~~ shall take all reasonable measures to protect the personal property in the possession of prisoners at the time of arrest or detention.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1800 - INFORMATION TO NEWS MEDIA

.1801 NEWS RELEASES

Subject to the restrictions set forth in Regulation .1803 of this Section, ~~members agents~~ may release information concerning ALE arrests and investigations to news media personnel, provided such release of information will not jeopardize a continuing investigation, the apprehension of suspects or the prosecution of the case.

Statutory Authority G.S. 18B-500; 143B-10.

.1802 INFORMATION WHICH MAY BE RELEASED

~~Members Agents~~ may make public the following information in ABC violations and criminal cases which do not involve juveniles:

- (1) the name, age, place of residence, employment, marital status or similar background

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information of a person charged with an offense;

- (2) the offense or violation charged, the time and place of arrest, whether weapons were found or used, description of evidence or contraband seized; and
- (3) the identity of investigating and arresting officers.

Statutory Authority G.S. 18B-500; 143B-10.

.1803 INFORMATION NOT TO BE RELEASED

~~Members Agents~~ shall not make public the following information in ABC violations and criminal cases:

- (1) opinions or other statements as to the character, reputation, guilt or innocence of a person charged with an offense;
- (2) opinions or other statements as to the character or reputation of witnesses;
- (3) opinions or other statements concerning the credibility or anticipated testimony of witnesses;
- (4) admissions, confessions, statements or alibis attributed to a person charged with an offense;
- (5) the results of any investigative procedure, polygraph examination or laboratory test involving a person charged with an offense;
- (6) the refusal of a person charged to submit to any test, except that information concerning refusal to submit to a chemical test for alcohol impairment may be released;
- (7) opinions or other statements concerning the plea of a person charged or of possible disposition of a charge or case;
- (8) opinions or other statements concerning evidence in a case or concerning points of argument to be presented in court;
- (9) statements concerning physical evidence which is not information of public record;
- (10) names of juveniles who are under investigation or who have been taken into custody.

Statutory Authority G.S. 18B-500; 143B-10.

.1804 ALLOWING PHOTOGRAPHS TO BE TAKEN

(a) ~~Members Agents~~ shall not prevent photographing of defendants in public places except in courtrooms and adjacent corridors as directed by the trial judge.

(b) ~~Members Agents~~ shall not pose an arrested person for news media photographers.

(c) Photographers shall not be prohibited from taking photographs of crashed aircraft or of vehicles involved in traffic collisions.

Statutory Authority G.S. 18B-500; 143B-10.

.1805 RELEASING NAMES OF DECEASED PERSONS

~~A member~~ An agent shall not release the name of a deceased person to the news media prior to notification of the deceased persons' families.

Statutory Authority G.S. 18B-500; 143B-10.

SECTION .1900 - LEAVING ASSIGNED DUTY STATION

.1901 LEAVING ASSIGNED AREA

(a) ~~Members Agents~~, on duty, shall not leave their district without authorization, except that ~~members agents~~ may leave their district when in pursuit of a violator.

(b) ~~Members, on duty, shall not leave their assigned area within their district without authorization, except that members may leave their assigned area within the district when in pursuit of a violator or on official business.~~

(c) ~~When not in pursuit, members on duty must have authorization from the district supervisor to leave their assigned area within the district.~~

(d) (b) When not in pursuit, ~~members agents~~ must have authorization from the ~~headquarters~~ ~~their supervisor or assistant supervisor~~ to leave the district.

Statutory Authority G.S. 18B-500; 143B-10.

.1902 LEAVING THE STATE

(a) ~~Members Agents~~ shall not leave the state while on duty except when authorized by the director or his designee, or when an emergency situation requires.

(b) When an emergency situation requires ~~members agents~~ to travel into another state, ~~members agents~~ shall not remain in the other state longer than is absolutely necessary.

(c) ~~Members Agents~~ required to leave the state for emergency purposes shall be governed by the following:

(1) ~~Members Agents~~ shall notify the nearest patrol communications center of their call number, destination, mission and estimated time of return to the state.

(2) ~~Members Agents~~ shall notify the patrol communications center immediately upon their return to the state, and the information shall be entered on the communications log.

(3) Emergency travel authorization reports shall be filed with the district supervisor as soon as possible after returning to the state. A single copy of the report will be

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filed for record purposes only at district headquarters.

Statutory Authority G.S. 18B-500; 143B-10.

.1903 LEAVING THE STATE: PURSUIT

(a) Members Agents shall not leave the state in pursuit of a law violator without approval of the district supervisor or higher authority.

(b) Members Agents shall not exercise the power of arrest in another state nor return an arrested person to this state except by due process of law.

Statutory Authority G.S. 18B-500; 143B-10.

SUBCHAPTER 8I - EFFECT AND USE OF MANUAL: LIABILITY

.0001 CIVIL AND CRIMINAL LIABILITY

This manual, Chapter 8 of Title 14A of the North Carolina Administrative Code, and all policies, rules, regulations, directives and procedures of the ALE division and the Department of Crime Control and Public Safety are for internal use only, and do not enlarge any member's employee's civil or criminal liability in any way, nor do they enlarge any supervisor's or civilian administrator's civil or criminal liability in any way with respect to training or other supervisory or administrative responsibilities of every kind and nature. These should not be construed as the creation of higher standard of safety or care in any legal or evidentiary sense, with respect to third party claims.

Statutory Authority G.S. 18B-500; 143B-10.

.0002 VIOLATIONS OF MANUAL

Violations of this manual, Chapter 8 of Title 14A of the North Carolina Administrative Code, and all policies, rules, regulations, directives and procedures of the department, if proven, can be used solely as the basis for disciplinary action against a member or an employee by this department, and then only in a non-judicial administrative proceeding.

Statutory Authority G.S. 18B-500; 143B-10.

CHAPTER 9 - STATE HIGHWAY PATROL

SUBCHAPTER 9H - ENFORCEMENT REGULATIONS

SECTION .0700 - USE OF PHYSICAL FORCE: FIREARMS

.0703 FIREARMS PROCEDURES

Members shall be governed by the following in the use of firearms:

- (1) Members shall use only patrol-issued ammunition in patrol-issued firearms while performing enforcement duties.
- (2) Members shall never fire warning shots.
- (3) Members shall not shoot at a fleeing ~~mis-demeanant~~.
- (4) Members are authorized to use deadly force when necessary to prevent the escape of a fleeing felon, when the person fleeing is positively identified as a dangerous felon; the felon must be dangerous to human life while fleeing, and the member must be able to fire without danger to other persons.
- (5) Members may fire at dangerous fleeing felons only when no other means of capture or arrest are reasonably available.
- (6) Members are authorized to use deadly force to prevent a felony dangerous to human life. Such force may be used only when other available means cannot prevent the felony.
- (7) (3) Members shall not remove sidearms from holsters except for authorized use in accordance with this Section, for inspection by a superior officer, or for other authorized purposes.
- (8) (4) Members shall not permit any person, other than another member, to use patrol firearms.
- (9) (5) Members who discharge any firearm while on duty, either intentionally or accidentally, shall file a written report to the Patrol Commander through official channels. This requirement shall not apply to members engaged in firearms practice.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188.

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Marine Fisheries Commission intends to amend regulations cited as 15 NCAC 3B .0102, .0105, .0308, .0401 - .0402, .0404, .0501, .0504, .0701, .0801, .0901, .0905, .1109, .1504; 15 NCAC 3C .0203.

The proposed effective date of this action is September 1, 1988.

The public hearing will be conducted at 7:30 p.m. on:

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May 9, 1988 - Government Complex Building, Bolivia;

May 10, 1988 - Dixon High School Cafeteria, Holly Ridge;

May 11, 1988 - East Carteret High School, Beaufort;

May 12, 1988 - Beaufort County District Courtroom, Washington;

May 16, 1988 - Ocracoke School Gymn, Ocracoke;

May 17, 1988 - Marine Resource Center, (N.C. Aquarium), Manteo;

May 18, 1988 - Ground Floor Hearing Room, Archdale Building, Raleigh.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than May 19, 1988.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS

SECTION .0100 - GENERAL REGULATIONS

.0102 DEFINITIONS

(b)

(14) Peeler Crab - a blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.

Statutory Authority G.S. 113-134; 143B-289.4.

.0105 LEGAL SIZES AND CREEL LIMITS

(e) It shall be unlawful to possess flounder less than 13 inches in total length. No person shall possess any quantity of flounder more than five percent of which are less than 14 inches in total length. The five percent tolerance shall be based on the weight of the total amount of flounder in possession or a portion thereof, however, when a method of determining weight is not readily available the five percent tolerance may be based on the percentage of flounder by number which are less than 14 inches. In determining whether the proportion of undersized flounder exceeds the five percent tolerance limit, the secretary and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of flounder in possession. If undersized flounder in excess of the tolerance limit are found in violation of this Re-

gulation the secretary or his agents may seize and make such disposition as is authorized by law of the entire quantity being graded or any portion thereof.

Statutory Authority G.S. 113-134; 113-182; 133-221; 143B-289.4.

SECTION .0300 - NET REGULATIONS: GENERAL

.0308 POUND NETS

(1) It shall be unlawful to use pound or fyke nets in internal coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include one of the following:

- (a) owner's N.C. motorboat registration number, or
- (b) owner's U.S. vessel documentation name, or
- (c) owner's last name and initials.

(a) For pound nets, the pound net registration number and the owner's last name and initials.

(b) For fyke nets, the owner's N.C. motorboat registration number, the owner's U.S. vessel documentation name, or the owner's last name and initials.

Statutory Authority G.S. 113-134; 113-182; 133-221; 143B-289.4.

SECTION .0400 - NET REGULATIONS: SPECIFIC

.0401 ALBEMARLE SOUND AND TRIBUTARIES

(2) From June 1 through September 30, no gill net shall be used with a mesh length less than five inches in the Albemarle Sound and tributaries between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges across Roanoke and Croatan Sounds, except gill nets with a mesh length of three inches or less. and attended by the fisherman at all times. No fisherman shall use more than 400 yards of nets with a mesh length of three inches or less.

(3) From October 1 through December 31, no gill net shall be used which has a mesh length less than three and one-half inches in Albemarle Sound and tributaries between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges across Roanoke and Croatan Sounds except attended gill nets as described in (2)

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of this Rule may be used. Gill nets which have a mesh length three and one-half inches and greater and less than four and one-quarter inches must be sunk to the bottom, set in no less than eight feet of water in the tributaries, ten feet of water in the Sound, and be no more than 35 meshes deep.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0402 ATLANTIC OCEAN

(4) Effective September 1, 1988, ~~From from October 1 through April 30, in order to protect small flounder which may be taken in the Atlantic Ocean, the Fisheries Director, based on reasonable and prudent management of marine and estuarine resources, may be proclamation establish fishing gear specifications for trawls used within three nautical miles of the beach, it shall be unlawful to use a trawl with a tailbag mesh length less than 4½ inches and less than 30 meshes long within three nautical miles of the beach. Effective September 1, 1990, from October 1 through April 30, it shall be unlawful to use a trawl with a tailbag mesh length less than five inches and less than 30 meshes long within three nautical miles of the beach.~~

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0404 CURRITUCK SOUND AND ITS TRIBUTARIES

(2) No seine or haul net may be used which is more than 900 yards in length or which has a mesh length of less than three and one-half inches.
(4) From June 1 through September 30, no gill net shall be used with a mesh length of ~~three~~ five inches or less except gill nets with a mesh length of three and one-quarter inches or less which are and attended by the fisherman at all times. No fisherman shall use more than 400 yards of nets with a mesh length of three and one-fourth inches or less.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SECTION .0500 - OTHER FISHING DEVICES

.0501 TOOTHED DREDGES

(c) It shall be unlawful to use a toothed or any other dredge to take oysters:

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0504 EEL: CRAB: FISH: SHRIMP POTS

(f) ~~It shall be unlawful to use crab pots in coastal waters unless each pot contains no less than four escape rings that are at least 2 3/8 inches inside diameter and located in the top and upper corners of outside panels of the wire mesh or webbing.~~

(g) ~~It shall be unlawful to use more than one hundred fifty pots per licensed vessel. in New port River.~~

(h) Any pots found in violation of this Rule may be removed by marine fisheries enforcement officers and disposed of in accordance with law.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0700 - SHRIMP AND SHRIMPING

.0701 USE OF NETS IN TAKING SHRIMP

(c) It shall be unlawful for any person to take or attempt to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh size. Chafing gear or additional tailbag material may be used on no more than one half of the circumference of the tailbag on the bottom of the outside of the tailbag. Net material used as chafing gear shall be no less than 4" mesh length except that chafing gear with small mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SECTION .0800 - CRABS

.0801 TAKING OF CRABS

(b) The following acts are prohibited:

(1) taking, buying, selling, or possessing any hard crabs measuring less than five inches from tip of spike to tip of spike except mature female crabs, and "peelers" which may be floated in regular crab floats. Crabs shall be culled where taken and all crabs less than legal size shall be immediately returned to the coastal fishing waters. "Peelers" shall be separated from the entire catch before reaching shore or dock. Tolerance of not more than 10 percent by weight number of any portion examined shall be allowed. In determining whether the proportion of undersize crabs exceeds the 10 percent tolerance limit, the Fisher-

ies Director and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of crabs being graded, and may require seizure and return to the waters, or other disposition as authorized by law, of the entire quantity being graded, or of any portion thereof, if undersized crabs in excess of the tolerance limit are found;

(2) using, for the purpose of taking hard crabs, any crab trawl having a mesh length of less than three inches; four and one-half inches;

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0900 - CLAMS

.0901 SIZE LIMIT/DAILY (HARVEST) LIMIT/METHOD OF TAKING CLAMS

(a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 clams per fishing operation from public bottom. ~~For openings as described in (e) (3) of this Rule, this limit may not apply.~~ It shall be unlawful to take, possess, sell or purchase any clams (except Rangia or freshwater clams) less than one inch thick. Clams will be culled by the catcher where taken and all clams of less than legal size with their shell, shall be immediately returned to the bottom where taken. The Fisheries Director and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of clams being graded and may require seizure and return to public bottom or other disposition as authorized by law of the entire quantity being graded or any portion thereof. Possession and sale of clams by a clam hatchery and purchase and possession of clams from a clam hatchery shall be exempt from this Rule. A clam hatchery is defined as any operation which obtains clams through the process of artificial spawning and culture methods.

(b) ~~No person shall~~ It shall be unlawful for any person to take or attempt to take clams by any method, other than by hand tongs, hand rakes, or by hand, from the coastal fishing waters. ~~except as provided in Paragraph (e) of this Rule.~~ Regardless of the areas which may be opened by the Fisheries Director, ~~no person shall it shall be unlawful for any person to~~ take or attempt to take clams by any method other than hand tongs, hand rakes no more than twelve inches wide or weighing no more than six pounds, or by hand in any natural or live oyster bed or in any established bed of aquatic vegetation which is defined

as those marine and estuarine areas of North Carolina where eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*), widgeon grass (*Ruppia maritima*), and smooth or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately. These vegetation beds occur in both subtidal and intertidal zones, and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of and consists of entire plants (which during some seasons may be mostly underground) including the above ground leaves and the below ground rhizomes, together with the sediment in which the plant grows.

(e) ~~Permit requirements and the season for taking clams with mechanical methods are as follows:~~

(1) ~~Clams shall not be taken by the use of mechanical methods except by special permit. Such permits may impose conditions and requirements reasonably necessary for the enforcement of fisheries regulations and for the prudent management of fisheries resources.~~

(2) ~~It shall be unlawful to take, buy, sell, or possess any clams taken by mechanical methods from public bottom until the Fisheries Director, acting upon the advice of the director, based on reasonable and prudent management of marine and estuarine resources, may be proclamation, open and close the season at any time between December 1 through March 31. The Fisheries Director is further empowered to impose any or all of the following restrictions:~~

~~(A) specify number of days, and
(B) specify areas,
(C) specify time period, and
(D) specify quantity and/or size.~~

(3) ~~For temporary openings made upon the recommendation of Shellfish Sanitation, for maintenance dredging operations, for the taking of Rangia clams, or for relaying of polluted clams to private leases, deeds, or grants as permitted by 15 NCAC 3B .0906, season as set by 15 NCAC 3B .0904 may not apply.~~

(4) (c) No person shall take clams from any shellfish management area which has been closed and posted by the state, except that the Fisheries Director, may open specific areas to allow the taking of clams and may designate time, place, character, or dimensions of any method or equipment that may be employed.

(d) ~~The Fisheries Director may, by proclamation, open only areas in Core Sound, Newport, North, White Oak and New Rivers and the IWW~~

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north of "BC" Marker at Topsail Beach which have been opened at any time from January, 1977, through September, 1988, to the harvest of clams by mechanical methods. Other areas opened for purposes as set out in Rule .0901 (c) (3) will open only for those purposes.

(e) The Fisheries Director may, by proclamation, open any coastal waters which have a water depth of five feet mean low water or more to the mechanical harvest of clams if they do not contain any natural or live oyster bed, any established bed of aquatic vegetation which is defined as those marine and estuarine areas of North Carolina where eelgrass (*Zostera marina*), shoal-grass (*Halodule wrightii*), widgeon grass (*Ruppia maritima*), and smooth or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately. These vegetation beds occur in both subtidal and intertidal zones, and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of and consists of entire plants (which during some seasons may be mostly underground) including the above ground leaves and the below ground rhizomes, together with the sediment in which the plant grows.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0905 TAKING OR UNLOADING CLAMS ON SUNDAY OR AT NIGHT

(b) It shall be unlawful to unload clams from any vessel or remove any vessel containing clams from the water on Sunday or between two hours after sunset and sunrise on any day. except that in New Hanover, Pender and Brunswick Counties, clams may be unloaded until two hours after sunset. Clams taken on Sunday under the provisions of 3B .0905 (a) are exempt from the Sunday unloading prohibition in this Subsection.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SECTION .1100 - OYSTERS

.1109 TAKING OR UNLOADING OYSTERS ON SUNDAY OR AT NIGHT

(b) It shall be unlawful to unload oysters from any vessel or remove any vessel containing oysters from the water on Sunday or between two hours after sunset and sunrise on any day. except that in New Hanover, Pender, and Brunswick Counties, oysters may be unloaded until two hours after sunset. Oysters taken on Sunday under the provisions of 3B .1109 (a) are exempt from the Sunday unloading prohibition in this Subsection.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SECTION .1500 - STRIPED BASS

.1504 SEASON AND SIZE LIMIT: ATLANTIC OCEAN

(a) It shall be unlawful for any person to possess striped bass taken in the Atlantic Ocean less than 24 inches long (total length). the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Management Plan for striped bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Management Plan.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3C - LICENSES: PERMITS: AND LEASES

SECTION .0200 - PERMITS

.0203 PERMIT FOR MECHANICAL HARVEST OF CLAMS

(c) Revocation or Suspension. The permit will be revoked or suspended under the following conditions:

- (1) If any permit holder fails to file a report of the daily catch of clams to the division by the 15th of the following month, his permit shall be suspended. Forms for filing the reports will be mailed to permit holders or may be obtained from marine fisheries inspectors. Permits may be reissued 10 days after receipt of reports. refuses to provide clam harvest information upon contact by division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated ten days after requested information is provided.
- (2) Upon conviction of violation of any marine fisheries law, regulation, or proclamation involving the use of mechanical methods, the owner's permit will suspended for no less than the following time periods: first conviction -- 10 days; second conviction within three years -- 30 days; third conviction within three years -- 60 days; and upon the fourth conviction within a three-year period, the permit will be permanently revoked.
- (3) Upon conviction of violation of Regulation 15 NCAC 3B .1111 or conviction

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of taking clams with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and after the second conviction within a three-year period the permit will be permanently revoked.

(4) In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation the minimum waiting period before application for a new permit will be considered will be six months; then only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management may a new permit be issued.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend the regulation cited as 15 NCAC 7H .0208(b)(6)(B).

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 10:00 a.m. on May 24, 1988 at Division of Marine Fisheries Conference Room, 3411 Arendell Street, Morehead City, NC.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Management Division will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposal may be obtained by contacting Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611. (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(b) Specific Use Standards

(6) Docks and Piers

(B) To preclude the adverse effects of shading marsh coastal wetlands vegetation, structures which are built over vegetated marsh docks and piers built over coastal wetlands shall not exceed six feet in width. except that "T's or and platforms associated with residential piers must be at the waterward end, are not restricted to these dimensions but cannot have a total area of more than 500 square feet. and must not exceed a total area of 500 sq. ft. with no more than six feet of the dimension perpendicular to the marsh edge extending over coastal wetlands. Water dependent projects requiring piers or wharfs of dimensions greater than those stated in this Rule shall be considered on a case-by-case basis.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend the regulation cited as 15 NCAC 7H .0304.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 7:00 p.m. on

*Monday, May 16, 1988 - New Hanover County Library, 201 Chestnut Street, Wilmington, NC;
Tuesday, May 17, 1988 - Currituck County Courthouse, Court Room, 2nd Floor, Currituck, NC;*

Wednesday, May 18, 1988 - Onslow County Courthouse, Jacksonville, NC;

Thursday, May 19, 1988 - Southport City Hall, Aldermans' Chamber, 201 E. Moore St., Southport, NC;

Monday, May 23, 1988 - Pender County, Hampstead Community Building, HWY 17, Hampstead, NC;

Tuesday, May 24, 1988 - Division of Marine Fisheries Conference Room, 3411 Arendell St., Morehead City, NC;

Wednesday, May 25, 1988 - N.C. Aquarium, Airport Road, Manteo, NC.

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Comment Procedures: All persons interested in this matter are invited to attend the public hearings. The Coastal Management Division will receive written comments up to the date of the hearings. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearings or the proposals may be obtained by contacting Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

.0304 AECs WITHIN OCEAN HAZARD AREAS

(a) a distance landward from the first line of stable natural vegetation to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates shall be those set forth in tables entitled "Long Term Annual Erosion Rates updated through 1986" ~~1980~~ or "Long Term Annual Erosion Rates Updated Through 1985" (Currituck County) approved by the Coastal Resources Commission on ~~March 18, 1983 and July 25, 1986~~ May 27, 1988 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). The tables are available without cost from any local permit officer or the Division of Coastal Management; and

Statutory Authority G.S. 113A-107 (a); 113A-107 (b); 113A-113 (b) (6a); 113A-113 (b) (6b); 113A-113 (b) (6d).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Natural Resources and Community Development intends to amend regulations cited as 15 NCAC 9C .0510 - .0513.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 7:00 p.m. on

May 17, 1988 - Jackson County Library, Sylva, NC;

May 18, 1988 - Watauga County Courthouse, Courtroom No. 2, Boone, NC.

Comment Procedures: Written comments are encouraged to be submitted prior to or during the hearings. These may be submitted to Derryl Walden, Division of Forest Resources, P.O. Box 27687, Raleigh, NC 27611. Oral comments may be presented by any interested party at the hearings.

CHAPTER 9 - FOREST RESOURCES

SUBCHAPTER 9C - DIVISION PROGRAMS

SECTION .0500 - FOREST TREE SEEDLINGS

.0510 PAYMENT FOR TREE SEEDLINGS

All applications ~~except Fraser fir applications~~ shall include full payment unless the nursery and tree improvement forester has approved the applicant's credit.

Statutory Authority G.S. 113-8; 113-35; 143B-10 (j).

.0511 FORFEITURE OF PAYMENT FOR LATE CANCELLATION

The division must guarantee sales in advance because tree seedling nurseries must cover costs of production from seedling sales. Therefore, any orders cancelled after ~~January 30~~ January 31 ~~for all species except Fraser fir~~ will result in forfeiture of total payment by the applicant.

Statutory Authority G.S. 113-8; 113-35; 143B-10 (j).

.0512 DISPOSITION AND PROCESSING OF TREE SEEDLING ORDERS

(a) The department fills all tree seedling orders ~~except Fraser fir orders~~, as received and notifies applicants when depleted seedling supply prevents acceptance of their orders.

(b) Special procedures shall apply to ~~Fraser fir~~ orders:

(1) The division accepts ~~Fraser fir~~ orders at department's Raleigh office for only 60 days following distribution of applications.

- (2) The division approves such orders on a first-come basis; however, if total orders exceed the total number of seedlings available, the division shall employ an equal share distribution process to fill orders.
- (3) The division shall notify applicants by January 10 of the number of Fraser fir trees they will receive. Applicants shall make full payment upon notification.

Statutory Authority G.S. 113-8; 113-35; 143B-10 (j).

.0513 AUTHORITY TO PRODUCE CHRISTMAS TREE SPECIES

- (a) The division produces seedlings and transplants of Fraser fir and other species suitable as Christmas trees in its nurseries.
 - (b) Given the department's limited production capabilities and the public heavy demand for Fraser fir trees, the division employs special provisions in the sale of this species:
 - (1) The division shall sell Fraser fir seedlings only to applicants who certify that they will plant the trees in counties ecologically suited for the species. These counties are Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, and Yancey.
 - (2) The division shall sell Fraser firs only to applicants who certify that they will plant the trees on property owned or leased by them.
 - (3) The division shall limit sales to one application per landowner, partnership, association, family, and corporations.
 - (b) The division will sell Fraser fir seedlings to applicants for planting in counties that are ecologically suitable. These counties are: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, and Yancey.
 - (c) For experimental planting, the division will sell Fraser fir seedlings to applicants in any county of the state.

Statutory Authority G.S. 113-8; 113-35; 143B-10 (j).

Notice is hereby given in accordance with G.S. 150B-12 that the Dept. of NRCD/Division of Community Assistance intends to adopt regulations cited as 15 NCAC 13P .0101 - .0104, .0201 - .0202, .0301 - .0303, .0401 - .0403, .0501 - .0505, .0601 - .0604.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 4:00 p.m. on June 2, 1988 at Ground Floor Conference Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Comments may be presented at the hearing or submitted by mail to:

*Chandler Bryan
Division of Community Assistance
P.O. Box 27687
Raleigh, NC 27611-7687.*

CHAPTER 13 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 13P - EMERGENCY SHELTER GRANTS PROGRAM ADMINISTRATIVE RULES

SECTION .0100 - GENERAL PROVISIONS

.0101 PURPOSE AND OBJECTIVES

The purpose of the North Carolina Emergency Shelter Grants Program (hereinafter referred to as "ESGP") is to assist families and individuals who are homeless primarily due to their economic circumstances. Consistent with this purpose, ESGP funds will assist local governments in improving the quality and availability of emergency shelters and services for the homeless in their community.

Authority G.S. 143-323; 143B-10; 143B-276; P.L. 99-500; 24 CFR 575.

.0102 DEFINITIONS

The following terms shall apply to the rules of this Subchapter:

- (1) "Act" means the Stewart B. McKinney Homeless Assistance Act, P.L. 100-77, as amended.
- (2) "Applicant" means a local government which makes an application pursuant to the provisions of this Subchapter.
- (3) "ESGP" means the state-administered Emergency Shelter Grants Program.
- (4) "Local Government" means any unit of general city or county government in the state.

* * * * *

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- (5) "NRCD" means the North Carolina Department of Natural Resources and Community Development.
- (6) "Recipient" means a local government that has been awarded an ESGP grant and has executed a Grant Agreement with NRCD.
- (7) "Secretary" means the Secretary of the Department of Natural Resources and Community Development or his designee.
- (8) "Shelter" means an individual facility with the capacity to provide overnight lodging whose purpose is to assist homeless persons through activities funded under this Subchapter. For purposes of this program, the term "shelter" excludes those facilities chartered and intended to function primarily as foster care or similar children's facilities or to serve victims of domestic violence.
- (9) "State" means the state of North Carolina.
- (10) "Subrecipient" means a nonprofit service-providing agency that a recipient contracts with to carry out services and activities funded under this Subchapter.

Authority G.S. 143-323; 143B-10; 24 CFR 575.3; P.L. 100-77.

.0103 WAIVERS

The Secretary may waive any requirements of this Subchapter not required by law whenever he determines that undue hardship to applicants, recipients or beneficiaries will result from applying the requirements and where application of the requirements would adversely affect the purposes of the Act.

Authority G.S. 143-323; 143B-10; P.L. 100-77; 24 CFR 575.

.0104 ELIGIBLE APPLICANTS

Eligible applicants are all local governments.

Authority G.S. 143-323; 143B-10; 24 CFR 575.23.

SECTION .0200 - ELIGIBLE AND INELIGIBLE ACTIVITIES

.0201 ELIGIBLE ACTIVITIES

This Subchapter, in accordance with G.S. 150B-14(c), adopts by reference as eligible activities those Operations activities described as such in 24 CFR 575.21(a)(3) and in corresponding sections of the Act, as amended. Copies of these sections of federal law and regulation are available for public distribution from the Division of Community Assistance of NRCD.

Authority G.S. 143-323; 143B-10; 150B-14; 24 CFR 575.21.

.0202 INELIGIBLE ACTIVITIES

This Subchapter, in accordance with G.S. 150B-14(c), adopts by reference as ineligible activities those activities described as such in the Act and in 24 CFR 575.21(b), as well as in 24 CFR 575.21(a)(1) and (2), as amended. Copies of these sections of federal law and regulation are available for public distribution from the Division of Community Assistance of NRCD.

Authority G.S. 143-323; 143B-10; 150B-14; 24 CFR 575.21.

SECTION .0300 - GENERAL REQUIREMENTS

.0301 APPLICATION REQUIREMENTS

(a) Local governments are required to submit applications in a manner prescribed by NRCD in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application, thus applications must provide sufficient information for NRCD to evaluate them.

(b) Applicants may apply for more than one grant and be awarded more than one grant, providing the total amount of funds awarded to a single shelter does not exceed the maximum limits described in Rule .0302 of this Section.

(c) NRCD shall designate specific dates for submission of ESGP grant applications. Grant application submission dates will be announced by NRCD a minimum of 20 days before the date applications are due.

(d) Applications must be received by NRCD administrative offices in Raleigh before 5:00 p.m. on the submission date or, if sent by mail, must be postmarked on or before the submission date.

(e) The applicant shall certify to NRCD that it will comply with all applicable federal and state laws, regulations, rules and executive orders.

(1) Copies of these federal and state documents are available for public distribution from the Division of Community Assistance of NRCD.

(2) Notwithstanding the provisions of Paragraph (d) in this Rule, certifications of compliance may be postmarked or received by NRCD up to two weeks after the date the application is due. This provision applies only to certifications.

(f) Applicants must comply with the Act, all applicable federal and state laws, regulations, rules, executive orders and guidelines issued by NRCD.

Authority G.S. 143-323; 143B-10; 24 CFR 575.61.

.0302 SIZE OF GRANTS

(a) The maximum amount which may be applied for is five thousand dollars (\$5,000) per shelter.

(b) The minimum grant which may be applied for is one thousand dollars (\$1,000).

(c) Notwithstanding the provisions of Paragraphs (a) and (b) in this Rule, NRCD reserves the right to award grants for less than the requested amount in the event that the total amount of funds requested exceeds the total amount of funds available. NRCD also reserves the right to award grants exceeding the amount requested if the total amount of funds requested is less than the total amount of funds available.

Authority G.S. 143-323; 143B-10; 24 CFR 575.

.0303 REALLOCATION

Any ESGP funds recaptured by NRCD, as provided for in Rule .0604 and Rule .0505 of this Subchapter will, if practicable, be added to the amount available for the next round of funding. If this is not feasible, the recaptured funds will be reallocated in a manner to be prescribed by NRCD.

Authority G.S. 143-323; 143B-10; 24 CFR 575.41.

SECTION .0400 - OPERATIONS CATEGORY

.0401 DEFINITION

The operations category included those eligible activities referenced in Rule .0201 of this Subchapter.

Authority G.S. 143-323; 143B-10; 24 CFR 575.21.

.0402 ELIGIBILITY REQUIREMENTS

Applications for ESGP funds must be complete and show that:

- (1) The application was duly authorized by the local governing body, or that such authorization is imminent;
- (2) Grant funds will be expended by a shelter as defined in Rule .0102 of this Subchapter;
- (3) Funds will be expended within 180 days of the date of the grant award;
- (4) All federal requirements will be met, including:
 - (a) Matching Resources - 24 CFR 575.51;
 - (b) Continuation of Shelter - 24 CFR 575.53;
 - (c) Nondiscrimination - 24 CFR 575.59(a).

Authority G.S. 143-323; 143B-10; 24 CFR 575.

.0403 AWARDS

All eligible applications received will be funded using a pro rata formula based on the total amount requested that is eligible for funding and the total amount available for distribution, in accordance with Rule .0302(c).

Authority G.S. 143-323; 143B-10; 24 CFR 575.

SECTION .0500 - GRANT ADMINISTRATION

.0501 GRANT AGREEMENT

(a) Upon approval of the application by NRCD, a written grant agreement will be executed between the recipient and NRCD. The Rules in this Subchapter, application guidelines, subsequent guidelines prepared by NRCD, the approved application, and any subsequent amendments to the approved application shall become a part of the grant agreement.

(b) The grant agreement in its original form and all modifications thereto shall be kept on file in the office of the recipient in accordance with Rule .0504 of this Section.

(c) ESGP Program amendments. Recipients shall request prior NRCD approval for all amendments to the grant agreement when the recipient proposes to distribute all or part of its grant(s) to programs, shelters, or agencies other than those approved in the current Grant Agreement.

(d) NRCD reserves the right to disallow any proposed amendment to the grant agreement.

Authority G.S. 143-323; 143B-10; 24 CFR 575.61.

.0502 METHOD OF ADMINISTRATION

(a) Recipients may delegate to nonprofit sub-recipients the responsibility of undertaking or carrying out ESGP activities pursuant to 24 CFR 575.3 and 24 CFR 575.23. This does not prohibit the designation of an administering agency, so long as no ESGP funds are used for administrative costs.

(b) NRCD shall make payments of ESGP funds to recipients on a cost-reimbursement or cost-incurred basis. Recipients shall request payment of ESGP funds in a manner prescribed by NRCD.

(c) All payments of ESGP funds to recipients must be for costs incurred during the period of the grant. Recipients will not receive payment for costs incurred before the execution of the Grant Agreement.

PROPOSED RULES

Authority G.S. 143-323; 143B-10; 24 CFR 575.

.0503 PROPERTY MANAGEMENT STANDARDS

(a) Property acquired with ESGP grant funds shall be used to provide benefits to the homeless.

(b) Recipients and subrecipients should use proceeds from the disposition of property acquired with ESGP funds in a manner which provides benefit to the homeless in their community.

Authority G.S. 143-323; 143B-10; 24 CFR 575.61.

.0504 RECORDKEEPING

(a) NRCD, or any of NRCD's duly authorized representatives, shall have access to all books, accounts, records, reports, files, audits, and other papers or property of recipients or their subrecipients and contractors pertaining to funds provided under this Subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(b) Financial records, supporting documents and all other reports and records required under this Subchapter, and all other audits and records pertinent to the ESGP Program shall be retained by the recipient for a period of at least three years from the date of the closeout of the program, except that records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(c) All records shall be sufficient to determine compliance with the requirements and primary objectives of the ESGP Program and all other applicable laws and regulations. All accounting records shall be supported by source documentation.

Authority G.S. 143-323; 143B-10; 24 CFR 575.67.

.0505 GRANT CLOSEOUTS

ESGP grants will be closed out by NRCD in the following circumstances:

- (1) NRCD will initiate closeout procedures after NRCD determines, in consultation with the recipient, that there are no impediments to closeout and that all ESGP funds have been expended.
- (2) Termination of grant for mutual convenience. Grant assistance provided under this Subchapter may be cancelled, in whole or in part, by NRCD or the recipient, prior to the completion of the approved ESGP Program, when both parties agree that the continuation of the program no longer is feasible or

would not produce beneficial results commensurate with the further expenditure of funds.

- (3) Termination for cause. The Secretary may terminate the recipient's entire grant, or the remaining balance thereof, in accordance with Rule .0604 of this Subchapter.

Authority G.S. 143-323; 143B-10; 159-34; 24 CFR 575.61.

SECTION .0600 - COMPLIANCE AND REPORTING REQUIREMENTS

.0601 COMPLIANCE

Recipients shall have responsibility for ensuring that ESGP funds are expended as stated in their grant agreement and in conformance with all applicable federal and state laws, regulations, and guidelines, regardless of whether activities are carried out by the recipient or a subrecipient. NRCD may prescribe procedures for ensuring compliance with the provisions of this Rule.

Authority G.S. 143-323; 143B-10; 24 CFR 575.61.

.0602 REPORTING

(a) NRCD may require recipients to provide an interim performance report in a form prescribed by NRCD. Recipients will be notified a minimum of 20 days before the report is due.

(b) The recipient shall submit an Annual Performance Report to NRCD as part of closeout procedures. NRCD will notify grantees of the date the Annual Performance Report is due. The Annual Performance Report shall be in a form prescribed by NRCD.

Authority G.S. 143-323; 143B-10; 24 CFR 575.65.

.0603 MONITORING BY NRCD

(a) The secretary may evaluate activities conducted under this Subchapter and their effectiveness in meeting the objectives of the ESGP program.

(b) The secretary may conduct such evaluations using NRCD personnel, or by contract or other arrangement with public or private agencies.

Authority G.S. 143-323; 143B-10; 24 CFR 575.69.

.0604 REMEDIES

When the secretary determines on the basis of a review of a recipient's performance that the objectives of an ESGP program described in the

grant agreement have not been met, NRCD may take one or more of the following actions as appropriate:

- (1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;
- (2) Condition a future grant;
- (3) Direct the recipient to stop the incurring of costs with grant amounts;
- (4) Require that some or all of the grant amounts be remitted to NRCD;
- (5) Reduce the level of funds the recipient would otherwise be entitled to receive; or
- (6) Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance.

Authority G.S. 143-323; 143B-10; 24 CFR 575.69.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Certified Public Accountant Examiners intends to amend regulations cited as 21 NCAC 8F .0302, .0401; 8G .0401, .0402, .0406, .0407; 8I .0004; 8J .0006.

The proposed effective date of this action is September 1, 1988.

The public hearing will be conducted at 9:00 a.m. on May 23, 1988 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the actions proposed at the public rule-making hearing or deliver written comments to the Board office not later than 9:00 a.m. on Monday, May 23, 1988. Anyone planning to attend the hearing should notify the Executive Director at the Board offices by noon on Wednesday, May 18, 1988, whether they wish to speak on the proposals and whether they will speak in favor of the proposals or against them. Oral presentations will be limited to 10 minutes per speaker.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0300 - EDUCATIONAL REQUIREMENTS FOR EXAMINATION

.0302 EDUCATION REQUIREMENTS

(d) If the second approach mentioned in Paragraph (a) of this Rule is selected by the applicant, the completion of two years in an accredited college or university or its equivalent shall mean that the applicant has successfully completed, or reasonably expects to complete at the end of the school term which begins before the examination date, at least 60 semester hours of ~~course~~ course work, or the equivalent in quarter hours, in a school, college or university accredited by one of the regional accrediting associations. The 60 semester hours shall include the concentration in accounting described in 21 NCAC 8F .0305. However, if the applicant fails to complete the necessary 60 semester hours within the specified time, the grades shall not be awarded.

(e) A regional accrediting association includes the Southern Association of Colleges and Schools and comparable accrediting associations as indicated in the Education Directory - Colleges and Universities, which is published by the U. S. Department of Education, National Center for Education Statistics. Colleges and ~~universities~~ universities which are members of the American Assembly of Collegiate Schools of Business are deemed to have standards substantially equivalent to a regionally accredited institution.

(g) An applicant who has completed the bachelor's degree or the concentration in accounting at a school which does not meet the requirements of G.S. 93-12(5) and paragraph (e) of this Rule shall be deemed to have completed the requirements at a school, college or university approved by the board by:

- (1) completion, prior to filing application for examination, at a school meeting the requirements of paragraph (e) of this Rule, of 10 additional semester hours (or equivalent) of graduate courses, including six semester hours (or equivalent) in graduate accounting courses, plus enrollment for an advanced degree; or
- (2) completion, prior to filing application for examination, at a school meeting the requirements of paragraph (e) of this Rule, of 15 additional semester hours (or equivalent) of undergraduate courses, including six semester hours (or equivalent) in undergraduate accounting courses.

Statutory Authority G.S. 93-12(3); 93-12(5).

SECTION .0400 - EXPERIENCE

.0401 GENERAL EXPERIENCE REQUIREMENTS

(b) A masters or more advanced degree may be used as a substitute for one year of the experience requirements as provided by G.S. 93-12(5). A law degree may be similarly substituted, provided that it was earned with "an emphasis in taxation or accounting," which shall be construed to mean twelve semester hours or equivalent in accounting, including taxation.

Statutory Authority G.S. 93-12(3); 93-12(5).

SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0400 - CONTINUING PROFESSIONAL EDUCATION

.0401 CONTINUING PROFESSIONAL EDUCATION

(a) Each person desiring to renew a certificate as a Certified Public Accountant must offer satisfactory evidence of having complied with the continuing professional education requirements of the board.

(b) (a) The requirements of the board include: Licensees shall:

(1) completion of complete the specified number of continuing professional education (CPE) hours of CPE by December 31 of the calendar year preceding the July 1 renewal date; and

(2) the filing of file the appropriate form satisfactorily completed and providing provide other specified information by the July 1 renewal date.

(c) (b) Certificate holders in active status must complete 40 CPE hours of continuing professional education by December 31, of the year preceding the July 1 renewal date, except as follows:

(d) (1) Persons having initial certificate applications approved by the board in January-March would not have to report CPE courses for the renewal period beginning in July of the same calendar year, but would have to complete 40 CPE hours during the same calendar year.

(e) (2) Persons having initial certificate applications approved by the board in April-June would not have to report CPE courses for the renewal period beginning in July of the same calendar year, but would have to complete 30 CPE hours during the same calendar year.

(f) (2) Persons having initial certificate applications approved by the board in July-

September would have to complete 20 CPE hours during the same calendar year.

(g) (3) Persons having initial certificate applications approved by the board in October-December would have to complete 10 CPE hours during the same calendar year.

(h) Any CPE hours completed during the calendar year in which the certificate is approved by the board may be used for that year's requirement.

(i) When an individual completes more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, not more than 20 hours may be carried forward and treated as hours earned in the following year. Any CPE hours completed during the calendar year in which the certificate is approved by the board may be used for that year's requirement.

Statutory Authority G.S. 93-12(8b).

.0402 DEFINITIONS

(a) "CPE" shall be construed to mean continuing professional education.

(b) "Field of accounting" shall be construed to mean employment for which one receives compensation for either full time or part time work in public accounting, governmental or other not for profit accounting, industrial, commercial, or financial accounting, or accounting education.

(c) (b) "Active" shall be construed to mean a CPA who is receiving compensation for active and current participation in the field of accounting. "Active" shall be construed to mean anyone possessing a North Carolina certificate who has not otherwise been granted "Retired", "Inactive", or "Conditional" status.

(d) (c) "Inactive" shall be construed to mean a CPA who is not receiving any compensation for current personal services in the field of accounting. "Inactive" shall also be construed to mean a CPA who resides outside the State of North Carolina and who is not receiving any compensation for current personal services in the field of accounting performed in or for persons, corporations or other entities in North Carolina and who does not use in this state the title "certified public accountant" or other words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant. "Inactive" shall be construed to mean an individual who voluntarily surrenders a certificate under 21 NCAC 8J .0006 or who is a North Carolina certificate holder with a legal residence outside the State of North Carolina and

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who does not practice the profession of accountancy within the State of North Carolina.

(e) (d) "Retired" shall be construed to mean a CPA anyone possessing a North Carolina certificate who is not receiving any earned compensation, for current personal services.

(e) "Conditional" shall be construed to mean anyone who holds a North Carolina certificate of qualification with restrictions as imposed by the board.

(f) "Board" shall be construed to mean the North Carolina State Board of Certified Public Accountant Examiners.

(g) "Calendar year" shall mean the 12 months beginning January 1 and ending December 31.

Statutory Authority G.S. 93-12(8b).

.0406 COMPLIANCE

(a) All CPAs classified as active must file a CPE reporting form by the July 1 renewal date. CPAs who are inactive or retired must file an affidavit of exemption from the renewal requirement by the July 1 renewal date. CPE reporting forms must be filed by the July 1 renewal date. CPAs who want to be classified as retired must file an application for retirement status and exemption from the CPE requirements by the July 1 renewal date. Inactive or Retired CPAs who desire to comply with the CPE requirements must file a CPE reporting form by the July 1 renewal date.

(c) Unless otherwise exempt under these Regulations, Rules, a licensee failing to satisfy the CPE requirements shall forfeit his/her CPA certificate as provided by G.S. 93-12(15), not be issued a renewal license and will be subject to disciplinary action under General Statutes of North Carolina 93-12(9) if he engages in the field of accounting without a valid renewal license.

In the discretion of the board, such disciplinary action such as that noted below may be taken and a renewal license issued may include, if the required number of approved CPE hours have been taken but not by the July 1 renewal deadline rather than during the preceding calendar year, the following:

(1) A conditional license upon such conditions as the board may deem appropriate may be issued pursuant to G.S. 93-12(8b) for the first such offense during the preceding five calendar years.

(2) A censure and a conditional license upon such conditions as the board may deem appropriate pursuant to G.S. 93-12(8b) and upon payment of a fine of one hundred dollars (\$100.00) for the second such

offense during the preceding five calendar years.

(3) Non-renewal of the license for a period of time not less than thirty days and until reinstatement requirements pursuant to 8I .0004 are met for the third such offense during the preceding five calendar years.

Statutory Authority G.S. 93-12(8b).

.0407 EXEMPTION AND SUBSEQUENT REINSTATEMENT

(a) A licensee who is inactive or retired as defined in 2I NCAC 8G .0402 shall be exempt from the renewal requirement of 2I NCAC 8G .0401 upon filing with the board an affidavit of exemption on a form provided by the board. Any individual on inactive or retired status may apply for reinstatement to active status. Such applicant must furnish to the board evidence of satisfactory completion of 40 hours of CPE courses (pursuant to 2I NCAC 8G .0403 - .0404) during the 12-month period immediately preceding the application for reinstatement.

(b) Any applicant for reinstatement must furnish to the board evidence of satisfactory completion of 40 hours of acceptable CPE courses during the twelve month period immediately preceding the licensee's application for reinstatement to active status. Effective January 1, 1989, eight of the required hours must be credits derived from a course or examination in North Carolina Accountancy Laws and Rules (including the Code of Ethics contained therein). as described in 2I NCAC 8G .0408. This requirement may be met by timely passage of a written, open-book examination approved by the board. Any CPE course hours used to satisfy the requirements for reinstatement may also be used to satisfy the CPE renewal requirement.

Statutory Authority G.S. 93-12(8b).

SUBCHAPTER 8I - REVOCATION OF CERTIFICATES AND OTHER DISCIPLINARY ACTION

.0004 REINSTATEMENT

(a) A person, partnership or professional corporation whose certificate or registration has been forfeited, revoked or suspended or who has been censured pursuant to G.S. 93-12(9) may apply to the board for modification of the forfeiture, revocation, suspension or censure at any time after the effective date of the board's decision imposing it; except that however, if any previous application has been made with respect to the same penalty, no additional application will be considered before the lapse of an addi-

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tional year following the board's decision on the last previous application.

Statutory Authority G.S. 55B-12; 93-12(9).

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0006 SURRENDERED CERTIFICATES

(a) A certificate holder who determines that the certificate of qualification issued by this the board is no longer needed or desired may voluntarily surrender the certificate and shall be considered inactive.

Statutory Authority G.S. 93-12(5); 93-12(8a); 93-12(8b).

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-12 that the Office of Administrative Hearings intends to amend regulation cited as 26 NCAC 3 .0001.

The proposed effective date of this action is August 1, 1988.

The public hearing will be conducted at 9:00 a.m. on May 16, 1988 at First Floor Hearing Room, Lee House, 422 North Blount Street, Raleigh, N. C.

Comment Procedures: Comments may be submitted in person or in writing at the public hearing or in writing prior to May 16, 1988, to Beecher R. Gray, Administrative Law Judge, P. O. Drawer 11666, Raleigh, N. C. 27604.

CHAPTER 3 - HEARINGS DIVISION

.0003 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

(4) Except as otherwise provided by statutes or by rules promulgated under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

Statutory Authority G.S. 7A-750; 150B-11; 150B-40(c).

Upon request from the adopting agency, the text of rules will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

**TITLE 21
OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 22
BOARD OF HEARING AID DEALERS AND FITTERS**

SUBCHAPTER 22A - BOARD RULES

SECTION .0100 - ORGANIZATIONAL RULES (REPEALED)

- .0101 FORMAL NAME
- .0102 PHYSICAL ADDRESS
- .0103 OFFICE HOURS
- .0104 MAILING ADDRESS
- .0105 PURPOSES AND RESPONSIBILITIES

SECTION .0200 - THE BOARD

- .0201 COMPOSITION (REPEALED)
- .0202 QUORUM (REPEALED)
- .0203 MEETINGS OF THE BOARD
- .0204 APPOINTMENTS
- .0205 QUALIFICATIONS (REPEALED)
- .0206 ANNUAL REPORT (REPEALED)

SECTION .0300 - DEFINITIONS

- .0301 DEFINITIONS AND INTERPRETATIONS
- .0302 BOARD (REPEALED)
- .0303 LICENSE
- .0304 HEARING AID (REPEALED)
- .0305 PRACTICE OF SELLING AND FITTING HEARING AIDS (REPEALED)
- .0306 DISORDERS OF HEARING (REPEALED)
- .0307 REGISTERED APPRENTICE
- .0308 REGISTERED APPLICANT
- .0309 DULY MADE APPLICATION
- .0310 ONE FULL YEAR OF APPRENTICESHIP
- .0311 DIRECT SUPERVISION
- .0312 AUDIOMETER

SUBCHAPTER 22B - RULE MAKING PROCEDURES

SECTION .0100 - PETITIONS FOR RULE MAKING

- .0101 PETITIONS
- .0102 CONTENTS OF PETITIONS (REPEALED)
- .0103 AMENDMENT OR REPEAL (REPEALED)
- .0104 CONTENTS OF PETITIONS (REPEALED)
- .0105 GRANTING OR DENYING PETITIONS (REPEALED)

FINAL RULES

- .0106 RECOMMENDATION (REPEALED)
- .0107 FINAL DECISION (REPEALED)

SECTION .0200 - NOTICE (REPEALED)

- .0201 NOTICE TO PARTIES
- .0202 MAILING LIST
- .0203 PUBLIC NOTICE
- .0204 INFORMATION REQUESTS

SECTION .0300 - HEARINGS

- .0301 LOCATION OF HEARINGS (REPEALED)
- .0302 COMMENTS
- .0303 REQUEST FOR ORAL PRESENTATIONS (REPEALED)
- .0304 ORAL PRESENTATION (REPEALED)
- .0305 WRITTEN STATEMENT (REPEALED)
- .0306 ACKNOWLEDGMENT (REPEALED)
- .0307 CONTROL OF HEARINGS
- .0308 REQUEST FOR STATEMENT ON FINAL DECISION (REPEALED)
- .0309 RECORDS (REPEALED)

SECTION .0400 - EMERGENCY RULES (REPEALED)

- .0401 POWER TO ISSUE
- .0402 LENGTH OF EFFECTIVENESS

SECTION .0500 - DECLARATORY RULINGS

- .0501 REQUEST FOR DECLARATORY RULING
- .0502 CONTENTS OF REQUEST (REPEALED)
- .0503 REFUSAL TO ISSUE DECLARATORY RULING
- .0504 ISSUANCE OF DECLARATORY RULING (REPEALED)
- .0505 PROCEDURE (REPEALED)
- .0506 VALIDITY OF RULE (REPEALED)
- .0507 CIRCUMSTANCES (REPEALED)

SECTION .0600 - FEES (REPEALED)

- .0601 FEE SCHEDULE
- .0602 AMOUNT

SUBCHAPTER 22C - CONTESTED CASES

SECTION .0100 - GENERAL RULES

- .0101 ADMINISTRATIVE HEARINGS PROCEDURES
- .0102 HEARINGS (REPEALED)

SECTION .0200 - REQUEST FOR A HEARING (REPEALED)

- .0201 REQUEST
- .0202 PREREQUISITES
- .0203 WRITTEN REQUEST
- .0204 CONTENTS OF REQUEST
- .0205 ACKNOWLEDGMENT

SECTION .0300 - THE GRANTING OF HEARING REQUESTS (REPEALED)

- .0301 GRANTING A HEARING
- .0302 CRITERIA
- .0303 ISSUANCE
- .0304 APPROVAL OF REQUEST

SECTION .0400 - WAIVER (REPEALED)

- .0401 FAILURE TO NOTIFY
- .0402 FAILURE TO APPEAR

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SECTION .0500 - NOTICE (REPEALED)

- .0501 REASONABLE NOTICE
- .0502 NOTICE AND HEARING
- .0503 ADDITIONAL INFORMATION ON NOTICES AND HEARINGS
- .0504 WRITTEN ANSWERS TO NOTICE

SECTION .0600 - WHO SHALL HEAR CONTESTED CASES (REPEALED)

- .0601 HEARING OFFICERS
- .0602 APPOINTMENT

SECTION .0700 - PLACE OF HEARING (REPEALED)

- .0701 LOCATION
- .0702 ALTERNATIVE LOCATIONS

SECTION .0800 - INTERVENTION (REPEALED)

- .0801 REQUIREMENTS
- .0802 PERMISSIVE INTERVENTION
- .0803 DISCRETIONARY INTERVENTION
- .0804 ADVISABILITY
- .0805 WRITTEN PETITION
- .0806 PETITION FOR INTERVENTION
- .0807 ALLOWANCE
- .0808 DENIAL

SECTION .0900 - HEARING OFFICERS

- .0901 HEARING OFFICER (REPEALED)
- .0902 CONDUCT (REPEALED)
- .0903 ALLEGED BIAS OF BOARD MEMBER
- .0904 BIAS CLAIMED BY PARTY (REPEALED)
- .0905 AFFIDAVIT OF DISQUALIFICATION (REPEALED)
- .0906 FILING AFFIDAVIT (REPEALED)
- .0907 DISQUALIFICATION (REPEALED)
- .0908 NEW HEARING (REPEALED)
- .0909 DISQUALIFICATION OF ENTIRE BOARD (REPEALED)
- .0910 DETERMINATION TO CONTINUE (REPEALED)
- .0911 RECORDS (REPEALED)

SUBCHAPTER 22D - CONDUCT OF THE CONTESTED CASE

SECTION .0100 - FAILURE TO APPEAR (REPEALED)

- .0101 PROCEEDING WITHOUT PARTY
- .0102 ALTERNATIVES OF HEARING OFFICER
- .0103 CONTINUANCES
- .0104 PETITION TO REOPEN
- .0105 CRITERIA FOR REOPENING A CASE

SECTION .0200 - PREHEARING CONFERENCE (REPEALED)

- .0201 DISCRETION TO HOLD PREHEARING CONFERENCE
- .0202 PURPOSES
- .0203 NATURE OF PREHEARING CONFERENCE
- .0204 NOTICE OF PREHEARING CONFERENCE
- .0205 SIMPLIFICATION OF ISSUES

SECTION .0300 - SUBPOENAS (REPEALED)

- .0301 AUTHORITY TO ISSUE
- .0302 ISSUANCE
- .0303 SERVICE OF SUBPOENAS
- .0304 UNREASONABLE SUBPOENAS
- .0305 OBJECTIONS
- .0306 STATEMENT OF REASONS

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- .0307 SERVICE OF OBJECTIONS
- .0308 RESPONSES TO OBJECTIONS
- .0309 HEARINGS ON SUBPOENA CHALLENGES
- .0310 RULINGS

SECTION .0400 - DISCOVERY (REPEALED)

- .0401 DISCOVERY OF INFORMATION
- .0402 FAILURE TO SUBMIT TO DISCOVERY

SECTION .0500 - DEPOSITIONS (REPEALED)

- .0501 USE OF DEPOSITIONS
- .0502 PROCEDURE FOR TAKING A DEPOSITION
- .0503 RULINGS ON DEPOSITIONS

SUBCHAPTER 22E - DECISION IN CONTESTED CASES

SECTION .0100 - PROPOSALS FOR DECISIONS (REPEALED)

- .0101 HEARING OFFICERS
- .0102 PROPOSAL FOR DECISION
- .0103 EXCEPTIONS

SECTION .0200 - OBJECTIONS TO BOARD DECISIONS (REPEALED)

- .0201 FORM
- .0202 RECORDS
- .0203 SUBSTANTIAL PREJUDICE
- .0204 ORAL ARGUMENTS
- .0205 NOTICE

SUBCHAPTER 22F - GENERAL EXAMINATION AND LICENSE PROVISIONS

- .0001 TIME OF EXAMINATIONS
- .0002 PLACE OF EXAMINATIONS (REPEALED)
- .0003 SUBMISSION OF APPLICATIONS AND FEES
- .0004 QUALIFICATIONS
- .0005 PASSING GRADES
- .0006 GRADING (REPEALED)
- .0007 COMMUNICATION OF RESULTS OF EXAMINATIONS
- .0008 REVIEW OF EXAMINATION
- .0009 FEES (REPEALED)
- .0010 REFUNDS
- .0011 RECIPROCITY (REPEALED)
- .0012 LICENSES (REPEALED)
- .0013 APPRENTICESHIP REQUIREMENTS
- .0014 TRAINING AND SUPERVISION
- .0015 SPONSORS' DUTIES
- .0016 SEPARATION OF APPRENTICE AND SPONSOR
- .0017 APPRENTICE TERMINATION (REPEALED)
- .0018 CHANGE OF ADDRESS
- .0019 SPONSORS' RESIDENCE (REPEALED)
- .0020 CONTINUING EDUCATION

SUBCHAPTER 22G - RENEWALS AND REGISTRATIONS (REPEALED)

- .0001 ANNUAL RENEWAL OF CERTIFICATES
- .0002 FORFEITURE

SUBCHAPTER 22H - REVOCATION OF LICENSES (REPEALED)

- .0001 PETITION AND BOARD PROCEDURES
- .0002 PROCEDURE WHERE MEMBER OF BOARD INVOLVED

FINAL RULES

SUBCHAPTER 22I - PROFESSIONAL AFFAIRS

- .0001 CLIENTS' INTEREST
- .0002 PROFICIENCY (REPEALED)
- .0003 VISUAL INSPECTION
- .0004 MEDICAL REFERRAL (REPEALED)
- .0005 MEDICAL REFERRAL OF OTHER HEARING PROBLEMS (REPEALED)
- .0006 DISCLOSURE
- .0007 AUDIOMETERS (REPEALED)
- .0008 CALIBRATION CHECK FOR AUDIOMETERS
- .0009 APPROVAL OF CALIBRATORS
- .0010 STANDARDS FOR AUDIOMETERS
- .0011 SYMBOLS FOR AUDIOGRAMS
- .0012 DISPLAY OF PRINTED CERTIFICATES
- .0013 LOCATION FOR PROVISION OF SERVICE

SUBCHAPTER 22J - CODE OF ETHICS

- .0001 FRAUD (REPEALED)
- .0002 EMPLOYMENT OF UNQUALIFIED PERSONS
- .0003 ADVERTISING
- .0004 USE OF LICENSE BY ANOTHER (REPEALED)
- .0005 DEFAMATION OF COMPETITORS
- .0006 DISPLAY OF PRODUCTS (REPEALED)
- .0007 PRICES
- .0008 USE OF TRADEMARKS
- .0009 OBTAINING INFORMATION ABOUT COMPETITORS
- .0010 INDUCEMENTS TO PURCHASE
- .0011 MISREPRESENTATION OF EDUCATION (REPEALED)
- .0012 MISREPRESENTATION OF PRODUCTS (REPEALED)
- .0013 UNETHICAL BUSINESS PRACTICES (REPEALED)
- .0014 FALSE OR CONCEALED INFORMATION

SUBCHAPTER 22K - FORMS

- .0001 DESIGNATION
- .0002 APPLICATION FOR LICENSE
- .0003 APPLICATION FOR APPRENTICE REGISTRATION CERTIFICATE
- .0004 ACCESS TO FORMS

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CHAPTER 22 - BOARD OF HEARING AID DEALERS AND FITTERS

SUBCHAPTER 22A - BOARD RULES

SECTION .0100 - ORGANIZATIONAL RULES

- .0101 FORMAL NAME
- .0102 PHYSICAL ADDRESS
- .0103 OFFICE HOURS
- .0104 MAILING ADDRESS
- .0105 PURPOSES AND RESPONSIBILITIES

History Note: *Statutory Authority G.S. 93D-3; 150B-10; 150B-11;*
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

SECTION .0200 - THE BOARD

- .0201 COMPOSITION
- .0202 QUORUM

History Note: *Statutory Authority G.S. 93D-3;*
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

.0203 MEETINGS OF THE BOARD

Meetings of the board shall be held quarterly or on the call of the president, the executive secretary, or a majority of the members of the board. The annual meeting to elect the president and the secretary-treasurer shall occur between the fifteenth day of July and the fifteenth day of August in each year. The dates for the quarterly meetings for the board's ensuing year and the examination preparation workshop dates for the upcoming calendar year shall be approved at that time.

History Note: *Statutory Authority G.S. 93D-3(b);*
Eff. April 23, 1976;
Amended Eff. May 1, 1988.

.0204 APPOINTMENTS

Any member of the board may continue to serve beyond his term until his successor is duly appointed and sworn, in accordance with G.S. 93B-10, however any holdover shall not affect the expiration date of the succeeding term.

History Note: *Statutory Authority G.S. 93B-10; 93D-3(a);*
Eff. April 23, 1976;
Amended Eff. May 1, 1988.

- .0205 QUALIFICATIONS
- .0206 ANNUAL REPORT

History Note: *Statutory Authority G.S. 93D-3;*
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS AND INTERPRETATIONS

- (a) The rules of statutory construction concerning number and gender as contained in G.S. 12-3(1) shall be applied in the construction of these Rules.
- (b) The definitions cited in this Section shall serve as interpretations for term appearing in Chapter 93D of the General Statutes of North Carolina and in these Rules. In addition, the definitions contained in the Food and Drug Administration Standards concerning Hearing Aid Devices, Title 21 of the Code of Federal Regulations Part 801, as published in the 42nd Volume of the Federal Register (Feb-

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ruary 15, 1977) page 9294 are adopted herein by reference, in accordance with G.S. 150B-14(b), with the following additions and amendments:

- (1) "Reconditioned" shall mean that the condition of the hearing aid is the same as a used hearing aid.
- (2) "Audiologist" shall mean any individual holding a valid non-temporary license as an audiologist issued by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists. Such individual is not required to serve as an apprentice, as set forth in G.S. 93D-5, before applying for issuance of a license by examination, in accordance with the consent judgment entered in 80 CVS 8161 and filed in Wake County Superior Court Division, the case entitled Audiology Council of North Carolina, Inc., v. The North Carolina Hearing Aid Dealers and Fitters Board.

*History Note: Statutory Authority G.S. 93D-3(c); 150B-14;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0302 BOARD

*History Note: Statutory Authority G.S. 93D-1;
Eff. April 23, 1976;
Repeated Eff. May 1, 1988.*

.0303 LICENSE

"License" shall mean the printed certificate, issued by the board, which an individual is required to obtain before engaging in the fitting and selling of hearing aids independent of a sponsor.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0304 HEARING AID

.0305 PRACTICE OF SELLING AND FITTING HEARING AIDS

.0306 DISORDERS OF HEARING

*History Note: Statutory Authority G.S. 93D-1; 93D-3;
Eff. April 23, 1976;
Repeated Eff. May 1, 1988.*

.0307 REGISTERED APPRENTICE

"Registered Apprentice" shall mean any individual who has duly made application to the board and has been issued an apprentice registration certificate which entitles such individual to fit and sell hearing aids under the supervision of a licensee approved by the board.

*History Note: Statutory Authority G.S. 93D-3 (c);
Eff. May 1, 1988.*

.0308 REGISTERED APPLICANT

"Registered Applicant" shall mean any individual, including a registered apprentice, who has duly made application to the board for issuance of a license and for which one or more of the following conditions apply:

- (1) The individual is seeking admission to the next scheduled qualifying examination given by the board (license by examination);
- (2) The individual is seeking reciprocity pursuant to G.S. 93D-6;
- (3) The individual is seeking reinstatement of an expired license as set forth in G.S. 93D-11; or
- (4) The individual is seeking reissuance of a suspended license in accordance with the provisions of G.S. 93D-13.

*History Note: Statutory Authority G.S. 93D-3 (c);
Eff. May 1, 1988.*

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.0309 DULY MADE APPLICATION

"Duly made application" shall mean that the completed application form, including all required documents, photographs, and fees, and any supplemental information requested by the board, is in the hands of the executive secretary of the board.

*History Note: Statutory Authority G.S. 93D-3 (c);
Eff. May 1, 1988.*

.0310 ONE FULL YEAR OF APPRENTICESHIP

"One full year of apprenticeship" shall mean that an individual, who is not an Audiologist and does not hold a masters degree in Audiology, has held a valid apprentice registration certificate for a period of 365 calendar days, has engaged in fitting and selling hearing aids for a minimum of 30 clock hours per week for a period of 50 weeks, and has received a minimum of 750 clock hours of direct supervision from a licensee approved by the board. The maximum time span allowed for completing the 365 calendar day requirement shall not exceed 24 consecutive months from the date of issuance of the initial apprentice registration certificate.

*History Note: Statutory Authority G.S. 93D-3 (c);
Eff. May 1, 1988.*

.0311 DIRECT SUPERVISION

"Direct supervision" shall mean the provision of general direction and control, including immediate personal on-site inspection and evaluation of work constituting the fitting and selling of hearing aids, as well as the provision of consultation and instruction.

*History Note: Statutory Authority G.S. 93D-3 (c);
Eff. May 1, 1988.*

.0312 AUDIOMETER

"Audiometer" shall mean an electronic device, used for air conduction testing, bone conduction testing, and for obtaining speech audiometry results, which contains a masking circuit, at least one VU meter, and capability of sound field output.

*History Note: Statutory Authority G.S. 93D-3 (c);
Eff. May 1, 1988.*

SUBCHAPTER 22B - RULE MAKING PROCEDURES

SECTION .0100 - PETITIONS FOR RULE MAKING

.0101 PETITIONS

In accordance with G.S. 150B-16, any person desiring the adoption, amendment or repeal of a rule by the board shall submit a petition to the board containing the following information:

- (1) Name of board;
- (2) A draft of the proposed rule;
- (3) Reasons for the adoption, amendment or repeal;
- (4) Data supporting the proposed rule;
- (5) The effect of the proposal on existing rules;
- (6) Effects of the proposed rule on persons licensed under Chapter 93D of the General Statutes of North Carolina;
- (7) Names (including addresses if known) of those most likely to be affected by the rule; and
- (8) Name(s) and address(es) of petitioner(s).

*History Note: Statutory Authority G.S. 93D-3(c); 150B-12; 150B-16;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0102 CONTENTS OF PETITIONS

.0103 AMENDMENT OR REPEAL

.0104 CONTENTS OF PETITIONS

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- .0105 GRANTING OR DENYING PETITIONS**
- .0106 RECOMMENDATION**
- .0107 FINAL DECISION**

History Note: Statutory Authority G.S. 93D-3; 150B-16;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

SECTION .0200 - NOTICE

- .0201 NOTICE TO PARTIES**
- .0202 MAILING LIST**
- .0203 PUBLIC NOTICE**
- .0204 INFORMATION REQUESTS**

History Note: Statutory Authority G.S. 93D-3; 150B-12; 150B-16;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

SECTION .0300 - HEARINGS

- .0301 LOCATION OF HEARINGS**

History Note: Statutory Authority G.S. 93D-3; 150B-12;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

- .0302 COMMENTS**

In accordance with G.S. 150B-12 and 150B-16, the record of hearing will be open for receipt of written comments for 30 consecutive days prior to the date of the public rule making hearing. Any interested person may present written or oral comments relevant to the actions proposed at the public rule making hearing or may deliver written comments to the board office no later than 10:00 a.m. on the day of the hearing. Any person planning to make oral comments is encouraged to submit a written copy of the presentation at or before the time of the public hearing.

History Note: Statutory Authority G.S. 93D-3(c); 150B-12; 150B-16;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.

- .0303 REQUEST FOR ORAL PRESENTATIONS**
- .0304 ORAL PRESENTATION**
- .0305 WRITTEN STATEMENT**
- .0306 ACKNOWLEDGMENT**

History Note: Statutory Authority G.S. 93D-3; 150B-11; 150B-12; 150B-16;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.

- .0307 CONTROL OF HEARINGS**

The presiding officer at the hearing shall have complete control of the proceedings including the allotment of time for oral presentations.

History Note: Statutory Authority G.S. 93D-3(c); 150B-12;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.

- .0308 REQUEST FOR STATEMENT ON FINAL DECISION**
- .0309 RECORDS**

History Note: Statutory Authority G.S. 93D-3; 150B-11; 150B-12; 150B-16;
Eff. April 23, 1976;

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Repealed Eff. May 1, 1988.

SECTION .0400 - EMERGENCY RULES

.0401 POWER TO ISSUE

.0402 LENGTH OF EFFECTIVENESS

*History Note: Statutory Authority G.S. 93D-3; 150B-13;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0500 - DECLARATORY RULINGS

.0501 REQUEST FOR DECLARATORY RULING

Any person affected by a statute administered by the board or by a rule promulgated by the board may request a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts. All requests for declaratory rulings shall be in writing and shall contain the following information:

- (1) Name(s) and address(es) of petitioner(s);
- (2) Statute and/or rule to which the petition relates; and
- (3) Concise statement of facts and explanation of the manner in which the petitioner is injured, or thinks he may be injured, by the statute or rule as applied to him.

*History Note: Statutory Authority G.S. 93D-3(c); 150B-17;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0502 CONTENTS OF REQUEST

*History Note: Statutory Authority G.S. 93D-3; 150B-17;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0503 REFUSAL TO ISSUE DECLARATORY RULING

In accordance with G.S. 150B-17, the board may decline to issue a declaratory ruling if any of the following circumstances exist:

- (1) A declaratory ruling would be futile because circumstances have so changed since the promulgation of the rule that the rule no longer serves its original purpose;
- (2) A similar factual situation has been the basis of a contested case;
- (3) The factual situation at issue was specifically considered upon the adoption of the rule being questioned, as evidenced by the rule making record;
- (4) The subject matter of the requested declaratory ruling is involved in a lawsuit pending in a court of this state or a federal court; or
- (5) Failure to comply with the requirements contained in Rule .0501 of this Section.

*History Note: Statutory Authority G.S. 93D-3(c); 150B-17;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0504 ISSUANCE OF DECLARATORY RULING

.0505 PROCEDURE

.0506 VALIDITY OF RULE

.0507 CIRCUMSTANCES

*History Note: Statutory Authority G.S. 93D-3; 150B-17;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0600 - FEES

.0601 FEE SCHEDULE
.0602 AMOUNT

*History Note: Statutory Authority G.S. 12-3.1; 93D-3;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SUBCHAPTER 22C - CONTESTED CASES

SECTION .0100 - GENERAL RULES

.0101 ADMINISTRATIVE HEARINGS PROCEDURES

(a) The following hearing division rules promulgated by the Office of Administrative Hearings, codified as Title 26, Chapter 3 of the North Carolina Administrative Code, effective August 1, 1986 and as amended through January 1, 1988, are hereby adopted by reference to apply to contested cases of the board:

- (1) 26 NCAC 3 .0001;
- (2) 26 NCAC 3 .0002;
- (3) 26 NCAC 3 .0004;
- (4) 26 NCAC 3 .0005;
- (5) 26 NCAC 3 .0006;
- (6) 26 NCAC 3 .0007;
- (7) 26 NCAC 3 .0008;
- (8) 26 NCAC 3 .0010;
- (9) 26 NCAC 3 .0011;
- (10) 26 NCAC 3 .0012;
- (11) 26 NCAC 3 .0013;
- (12) 26 NCAC 3 .0014;
- (13) 26 NCAC 3 .0015;
- (14) 26 NCAC 3 .0016;
- (15) 26 NCAC 3 .0017;
- (16) 26 NCAC 3 .0018;
- (17) 26 NCAC 3 .0019;
- (18) 26 NCAC 3 .0020;
- (19) 26 NCAC 3 .0021;
- (20) 26 NCAC 3 .0022;
- (21) 26 NCAC 3 .0024;
- (22) 26 NCAC 3 .0026;
- (23) 26 NCAC 3 .0027;
- (24) 26 NCAC 3 .0028; and
- (25) 26 NCAC 3 .0029.

(b) The hearing division rules cited in Paragraph (a) of this Rule are adopted in accordance with G.S. 150B-14 (b).

*History Note: Statutory Authority G.S. 93D-3(c); 150B-14; 150B-38(h);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0102 HEARINGS

*History Note: Statutory Authority G.S. 93D-3; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0200 - REQUEST FOR A HEARING

.0201 REQUEST
.0202 PREREQUISITES
.0203 WRITTEN REQUEST

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- .0204 CONTENTS OF REQUEST**
- .0205 ACKNOWLEDGMENT**

*History Note: Statutory Authority G.S. 93D-3; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0300 - THE GRANTING OF HEARING REQUESTS

- .0301 GRANTING A HEARING**
- .0302 CRITERIA**
- .0303 ISSUANCE**
- .0304 APPROVAL OF REQUEST**

*History Note: Statutory Authority G.S. 93D-3; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0400 - WAIVER

- .0401 FAILURE TO NOTIFY**
- .0402 FAILURE TO APPEAR**

*History Note: Statutory Authority G.S. 93D-3; 150B-38; 150B-40;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0500 - NOTICE

- .0501 REASONABLE NOTICE**
- .0502 NOTICE AND HEARING**
- .0503 ADDITIONAL INFORMATION ON NOTICES AND HEARINGS**
- .0504 WRITTEN ANSWERS TO NOTICE**

*History Note: Statutory Authority G.S. 93D-3; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0600 - WHO SHALL HEAR CONTESTED CASES

- .0601 HEARING OFFICERS**
- .0602 APPOINTMENT**

*History Note: Statutory Authority G.S. 93D-3; 150B-40;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0700 - PLACE OF HEARING

- .0701 LOCATION**
- .0702 ALTERNATIVE LOCATIONS**

*History Note: Statutory Authority G.S. 93D-3; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0800 - INTERVENTION

- .0801 REQUIREMENTS**
- .0802 PERMISSIVE INTERVENTION**
- .0803 DISCRETIONARY INTERVENTION**
- .0804 ADVISABILITY**

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- .0805 WRITTEN PETITION
- .0806 PETITION FOR INTERVENTION
- .0807 ALLOWANCE
- .0808 DENIAL

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0900 - HEARING OFFICERS

- .0901 HEARING OFFICER
- .0902 CONDUCT

*History Note: Statutory Authority G.S. 93D-3; 150B-40;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0903 ALLEGED BIAS OF BOARD MEMBER

- (a) If any party in a contested case reasonably believes that a member of the board involved in the hearing is personally biased or otherwise unable to participate in ruling on the issues raised in the hearing in an impartial manner, such party may file with the board a sworn notarized affidavit stating the specific reasons and facts for such belief. An affidavit will be considered timely if filed before commencement of the hearing. Any other affidavit may be found timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that any board member involved in the hearing may be biased.
- (b) The remaining board members shall decide whether to disqualify the person being challenged by the following procedure:
 - (1) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the remaining members of the hearing board;
 - (2) The president of the North Carolina State Hearing Aid Dealers and Fitters Board may appoint a member of the board or the executive secretary to investigate the allegations of the affidavit;
 - (3) If appointed, the investigator shall report his findings and recommendations to the remainder of the members of the hearing board who will then decide whether to disqualify the challenged individual; and
 - (4) A record of the proceedings and the reasons for decisions reached will be maintained as part of the contested case record.
- (c) A board member shall refrain from participating in a contested case if at any time he deems himself disqualified for any reason.

*History Note: Statutory Authority G.S. 93D-3(c); 150B-38(h);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

- .0904 BIAS CLAIMED BY PARTY
- .0905 AFFIDAVIT OF DISQUALIFICATION
- .0906 FILING AFFIDAVIT
- .0907 DISQUALIFICATION
- .0908 NEW HEARING
- .0909 DISQUALIFICATION OF ENTIRE BOARD
- .0910 DETERMINATION TO CONTINUE
- .0911 RECORDS

*History Note: Statutory Authority G.S. 93D-3; 150B-40;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SUBCHAPTER 22D - CONDUCT OF THE CONTESTED CASE

SECTION .0100 - FAILURE TO APPEAR

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- .0101 PROCEEDING WITHOUT PARTY**
- .0102 ALTERNATIVES OF HEARING OFFICER**
- .0103 CONTINUANCES**
- .0104 PETITION TO REOPEN**
- .0105 CRITERIA FOR REOPENING A CASE**

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0200 - PREHEARING CONFERENCE

- .0201 DISCRETION TO HOLD PREHEARING CONFERENCE**
- .0202 PURPOSES**
- .0203 NATURE OF PREHEARING CONFERENCE**
- .0204 NOTICE OF PREHEARING CONFERENCE**
- .0205 SIMPLIFICATION OF ISSUES**

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0300 - SUBPOENAS

- .0301 AUTHORITY TO ISSUE**
- .0302 ISSUANCE**
- .0303 SERVICE OF SUBPOENAS**
- .0304 UNREASONABLE SUBPOENAS**
- .0305 OBJECTIONS**
- .0306 STATEMENT OF REASONS**
- .0307 SERVICE OF OBJECTIONS**
- .0308 RESPONSES TO OBJECTIONS**
- .0309 HEARINGS ON SUBPOENA CHALLENGES**
- .0310 RULINGS**

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-39;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0400 - DISCOVERY

- .0401 DISCOVERY OF INFORMATION**
- .0402 FAILURE TO SUBMIT TO DISCOVERY**

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-39;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0500 - DEPOSITIONS

- .0501 USE OF DEPOSITIONS**
- .0502 PROCEDURE FOR TAKING A DEPOSITION**
- .0503 RULINGS ON DEPOSITIONS**

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-39;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SUBCHAPTER 22E - DECISION IN CONTESTED CASES

SECTION .0100 - PROPOSALS FOR DECISIONS

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- .0101 HEARING OFFICERS**
- .0102 PROPOSAL FOR DECISION**
- .0103 EXCEPTIONS**

*History Note: Statutory Authority G.S. 93D-3; 150B-14; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SECTION .0200 - OBJECTIONS TO BOARD DECISIONS

- .0201 FORM**
- .0202 RECORDS**
- .0203 SUBSTANTIAL PREJUDICE**
- .0204 ORAL ARGUMENTS**
- .0205 NOTICE**

*History Note: Statutory Authority G.S. 12-3.1; 93D-3; 150B-14; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SUBCHAPTER 22F - GENERAL EXAMINATION AND LICENSE PROVISIONS

.0001 TIME OF EXAMINATIONS

The board shall hold the qualifying examination as set forth in G.S. 93D-8 on the first Saturday in May of each year and shall hold an additional examination on the first Saturday in November of each year provided that at least four individuals have duly made application for issuance of a license and that the filing for admission to the examination was timely.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-8;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0002 PLACE OF EXAMINATIONS

*History Note: Statutory Authority G.S. 93D-3; 93D-8;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0003 SUBMISSION OF APPLICATIONS AND FEES

(a) A duly made application for issuance or renewal of an apprentice registration certificate shall be submitted to the executive secretary of the board no later than ten working days after the date that any of the following conditions exist:

- (1) Whenever a registered apprentice is separated from his sponsor for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate;
- (2) Whenever a registered apprentice is notified by the executive secretary of the board that he failed to pass the qualifying examination and such individual wishes to renew his certificate;
- (3) Whenever the executive secretary of the board notifies the individual that his apprentice registration certificate has been invalidated for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate; and
- (4) Whenever an Audiologist duly makes application for issuance of a license by examination and that individual elects to become a registered apprentice in order to engage in the fitting and selling of hearing aids, under the supervision of a licensee approved by the board, while waiting to take the next scheduled qualifying examination.

(b) A registered apprentice who holds a masters degree in Audiology and is not an Audiologist, as defined in 21 NCAC 22A .0301 (2), may first apply for issuance of a license by examination any time after that individual has completed 250 clock hours of supervision by a licensee approved by the board. However, no later than ten working days after any registered apprentice who is not an Audiologist has held a valid apprentice registration certificate for 365 calendar days, the apprentice shall submit a duly made application for issuance of a license by examination and shall take the next scheduled qualifying

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examination. All registered apprentices shall reapply for a license by examination, within the time prescribed in Paragraph (c) of this Rule, each time they take and fail to pass the qualifying examination.

(c) Whenever a registered applicant is required to take the qualifying examination as a condition for issuance of a license or reissuance of a suspended license, the duly made application shall be considered by the board to be timely if it is in the hands of the executive secretary no later than 30 consecutive days prior to the examination date. The board shall have the right to refuse any person admission to the qualifying examination if such individual has not duly made application for issuance or reissuance of a license, has not attended an examination preparation workshop as set forth in 21 NCAC 22F .0014 (b), or has not made a timely filing.

(d) All fees shall be paid to the executive secretary by a bank check, certified check, or money order made payable to N.C. Hearing Aid Dealers and Fitters Board.

History Note: Statutory Authority G.S. 93D-3(c); 93D-9;

Eff. April 23, 1976;

Amended Eff. May 1, 1988.

.0004 QUALIFICATIONS

(a) The board may require such supplemental information to all applications for issuance and renewal of a license or an apprentice registration certificate as it deems necessary to determine the facts governing the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. Supplemental information may include, but is not necessarily limited to, letters of recommendation, affidavits, photographs, official transcripts, and, if warranted, personal appearances before the board.

(b) Any registered apprentice who holds a masters degree in Audiology and any Audiologist who elects to be a registered apprentice shall, prior to the next scheduled qualifying examination, submit to 250 clock hours of direct supervision by a licensee approved by the board, whenever such apprentice takes and fails to pass the qualifying examination.

(c) Any registered apprentice who is not an Audiologist and does not hold a masters degree in Audiology shall, for each week prior to the next scheduled qualifying examination, submit to 15 clock hours of direct supervision by a licensee approved by the board, whenever such apprentice takes and fails to pass the qualifying examination.

(d) An Audiologist who engages in the fitting and selling of hearing aids within the office(s) of an otolaryngologist, solely while serving as an employee who works a minimum of 30 clock hours per week for such otolaryngologist and who is under the direct supervision of such otolaryngologist, shall not be subject to the provisions of 21 NCAC 22 or Chapter 93D of the General Statutes of North Carolina.

History Note: Statutory Authority G.S. 93D-3(c); 93D-5; 93D-9;

Eff. April 23, 1976;

Amended Eff. May 1, 1988.

.0005 PASSING GRADES

The board shall annually review the contents and outcome of the previous qualifying examinations and shall determine the minimum performance criteria required for passing the examination. In accordance with G.S. 93B-8 (a), each registered applicant shall be informed in writing of the requirements for passing the examination prior to his taking the examination.

History Note: Statutory Authority G.S. 93B-8; 93D-3(c);

Eff. April 23, 1976;

Amended Eff. May 1, 1988.

.0006 GRADING

History Note: Statutory Authority G.S. 93D-3;

Eff. April 23, 1976;

Repealed Eff. May 1, 1988.

.0007 COMMUNICATION OF RESULTS OF EXAMINATIONS

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(a) Pursuant to G.S. 93B-8 (b), each registered applicant shall be identified by number, rather than by name, for purpose of the examination.

(b) The executive secretary of the board shall issue written notification to each registered applicant, concerning only his own performance on the qualifying examination, no later than 14 consecutive days after the results of the examination are in the hands of the executive secretary.

*History Note: Statutory Authority G.S. 93B-8; 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0008 REVIEW OF EXAMINATION

As set forth in G.S. 93B-8 (c), each registered applicant who takes and does not pass the qualifying examination shall be granted an opportunity to review his examination in the presence of a representative of the board, upon written request from the applicant. Such written request shall be in the hands of the executive secretary of the board no later than 30 consecutive days after the written notification of the examination results was issued by the executive secretary.

*History Note: Statutory Authority G.S. 93B-8; 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0009 FEES

*History Note: Statutory Authority G.S. 12-3.1; 93D-3;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0010 REFUNDS

Application fees shall not be refunded for any reason.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0011 RECIPROCITY

.0012 LICENSES

*History Note: Statutory Authority G.S. 93D-3; 93D-5; 93D-6;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0013 APPRENTICESHIP REQUIREMENTS

(a) Pursuant to G.S. 93D-9, each individual who duly makes application for issuance or renewal of an apprentice registration certificate shall submit a plan, using the form provided by the board, for completing the supervision requirement for the apprenticeship. The registered apprentice shall submit a report of the apprenticeship experience, using the form provided by the board, no later than ten working days after the date that any of the following conditions exist:

- (1) The apprentice and his sponsor are separated for any reason and thus causing the apprentice registration certificate to become invalidated;
- (2) The apprentice, who is not an Audiologist, has held a valid apprentice registration certificate for 365 calendar days;
- (3) The apprentice, who holds a masters degree in Audiology and is not an Audiologist, has completed 250 clock hours of supervision, prior to first taking the qualifying examination;
- (4) The apprentice has been notified by the executive secretary of the board that he failed the qualifying examination and the individual is reapplying for issuance of a license by examination;
- (5) The apprentice, who has renewed his apprentice registration certificate after failing to pass the qualifying examination, has been notified by the executive secretary of the board that he has passed the subsequent qualifying examination; or
- (6) The board has issued a written request to the registered apprentice for submission of a report, in order to determine fulfillment of the apprentice experience requirements.

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(b) The initial apprentice registration certificate issued to any person who is not an Audiologist, and any subsequently issued replacements for an invalidated certificate, shall expire after the apprentice has held a valid apprentice registration certificate for a total of 365 calendar days. Upon receipt of a duly made application for issuance of a license by examination, the board shall, when necessary, extend the certificate, at no charge to the registered apprentice, until 30 consecutive days after the results of the next scheduled qualifying examination are in the hands of the executive secretary of the board. The initial apprentice registration certificate, and any replacements which are issued to an Audiologist prior to his first taking the qualifying examination, shall expire 30 consecutive days after the results of the next scheduled qualifying examination are in the hands of the executive secretary of the board.

(c) Whenever any registered apprentice takes and fails to pass the qualifying examination, the individual shall duly make application for issuance of a renewal certificate which shall expire 30 consecutive days after the results of the next scheduled qualifying examination are in the hands of the executive secretary of the board.

(d) All registered apprentices shall comply with the rules and regulations, including the code of ethics, promulgated by the board and with the provisions set forth in Chapter 93D of the General Statutes of North Carolina. Failure to comply shall be sufficient grounds to invalidate an apprentice registration certificate, to deny future applications for issuance of an apprentice registration certificate, to deny renewal of an apprentice registration certificate, or to deny, suspend or revoke a license after proper notice and hearing.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-9;
Eff. April 23, 1976;
Amended Eff. May 1, 1988; November 4, 1980.*

.0014 TRAINING AND SUPERVISION

(a) Each registered apprentice, excluding those Audiologists who elect to be a registered apprentice while waiting to take the qualifying examination for the first time, shall submit to direct supervision by a licensee who is approved by the board and who shall be responsible for the apprentice's training and supervision in the following areas:

- (1) Anatomy, physiology, and pathology of the auditory mechanism;
- (2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
- (3) Hearing aid technology including instrument circuitry and acoustic performance data;
- (4) Design, selection, and modification of earmold/shell coupling systems;
- (5) Hearing aid selection procedures, and fitting and adjustment techniques;
- (6) Post-delivery care including hearing aid orientation and counseling techniques, and hearing aid servicing;
- (7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
- (8) Other related topics that the sponsor or apprentice deem necessary.

(b) Before taking the qualifying examination for the first time, each registered apprentice who is not an Audiologist shall attend an examination preparation workshop, approved or sponsored by the board, which consists of one 3-day session. The workshop dates will be scheduled in conjunction with the dates for the qualifying examinations. Information concerning the scheduled times, dates, and topics for each workshop may be obtained from the executive secretary of the board. Written notice of intent to attend any or all of the daily sessions must be in the hands of the executive secretary of the board at least three consecutive days prior to the starting date of each workshop.

(c) The board shall have the right to refuse any person admission to the workshop sessions if the individual is not a registered apprentice or a registered applicant, or if timely notification of intent to attend was not made in accordance with Paragraph (b) of this Rule.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-5;
Eff. April 23, 1976;
Amended Eff. May 1, 1988; November 4, 1980.*

.0015 SPONSOR'S DUTIES

(a) Each sponsor of a registered apprentice shall supervise, instruct, and train his apprentice in accordance with the rules and regulations promulgated by the board, including the code of ethics, and with Chapter 93D of the General Statutes of North Carolina.

(b) Pursuant to G.S. 93D-9 (c), the sponsor shall assist his apprentice in submitting all required plans for completing the supervision requirements for the apprenticeship and all required reports of the apprenticeship experience.

(c) In accepting an apprentice, including any individual who is an Audiologist or holds a masters degree in Audiology, the sponsor shall be responsible for the conduct of such registered apprentice while that individual is engaged in the fitting and selling of hearing aids and shall acquaint his apprentice with all federal and state regulations concerning the fitting and selling of hearing aids.

(d) In accepting any apprentice who has taken and failed to pass the qualifying examination, the sponsor shall provide training and direct supervision in accordance with this Rule and 21 NCAC 22F .0004.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-9;
Eff. April 23, 1976;
Amended Eff. May 1, 1988; November 4, 1980.*

.0016 SEPARATION OF APPRENTICE AND SPONSOR

(a) In any case where a registered apprentice is separated from his sponsor for any reason, the following procedures shall apply:

- (1) The apprentice shall return the original and all copies of his invalidated apprentice registration certificate, along with his pocket identification card which was issued by the board, to the executive secretary of the board within ten working days after such separation;
- (2) The apprentice shall cease to fit and sell hearing aids until a new certificate is issued by the board;
- (3) The sponsor shall notify the executive secretary of the board, in writing, of any separation from his apprentice within ten working days after such separation; and
- (4) The sponsor shall assist the apprentice by returning to the executive secretary of the board, within ten working days after such separation, the original and all copies of the apprentice's invalidated apprentice registration certificate that may be in the possession of the sponsor.

(b) Failure to abide by the procedures stated in this Rule may result in denial of any future applications for issuance of an apprentice registration certificate or a license, and may result in disciplinary action for the sponsor after proper notice and hearing.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-5;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0017 APPRENTICE TERMINATION

*History Note: Statutory Authority G.S. 93D-3; 150B-9(c);
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0018 CHANGE OF ADDRESS

It is the duty of all licensees, registered applicants, and registered apprentices to notify the executive secretary of the board, within ten working days, of any change in the business name(s) or the street address(es), within the State of North Carolina, of their place(s) of business or proposed place(s) of business. Failure to do so may result in disciplinary action after proper notice and hearing.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-10;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0019 SPONSORS' RESIDENCE

*History Note: Statutory Authority G.S. 93D-3;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0020 CONTINUING EDUCATION

FINAL RULES

Each licensee shall be required to obtain a specified number of Continuing Education Units, on an annual basis, as a requirement for license renewal. The duty of obtaining information regarding the number of required continuing education program clock hours of credit or the topic content categories applicable for credit, and for obtaining the forms, issued by the board, for requesting program approval and attendance verification is solely the responsibility of the licensee. Current requirements may be obtained from the executive secretary of the board and these requirements shall be reviewed annually by the board.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-11;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

SUBCHAPTER 22G - RENEWALS AND REGISTRATIONS

.0001 ANNUAL RENEWAL OF CERTIFICATES

.0002 FORFEITURE

*History Note: Statutory Authority G.S. 93D-3; 93D-11;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SUBCHAPTER 22H - REVOCATION OF LICENSES

.0001 PETITION AND BOARD PROCEDURES

.0002 PROCEDURE WHERE MEMBER OF BOARD INVOLVED

*History Note: Statutory Authority G.S. 93D-3; 93D-13; 150B-14; 150B-38;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

SUBCHAPTER 22I - PROFESSIONAL AFFAIRS

.0001 CLIENTS' INTEREST

In order to serve the best interest of the client, all licensees and registered apprentices shall advise their clients to take the recommended actions as prescribed in 21 CFR 801 (effective August 15, 1977), Subparts 801.420 and 801.421, which are herein adopted by reference in accordance with G.S. 150B-14 (b).

*History Note: Statutory Authority G.S. 93D-3(c); 150B-14;
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0002 PROFICIENCY

*History Note: Statutory Authority G.S. 93D-3;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0003 VISUAL INSPECTION

All licensees and registered apprentices shall use a suitable device having its own light source for visual inspection of the external auditory canal and the tympanic membrane, in order to fulfill the requirements of 21 CFR 801 (effective August 15, 1977), Subpart 801.420 concerning the warning to hearing aid dispensers, which have been adopted by reference in Rule .0001 of this Subchapter.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0004 MEDICAL REFERRAL

.0005 MEDICAL REFERRAL OF OTHER HEARING PROBLEMS

FINAL RULES

*History Note: Statutory Authority G.S. 93D-3; 150B-14;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0006 DISCLOSURE

(a) In addition to the information required by G.S. 93D-7, all licensees and registered apprentices shall, by the time of delivery of the hearing aid(s), complete one or more written statements of sale containing the following:

- (1) The business name and street address, within the State of North Carolina, of at least one place of business of the seller;
- (2) The name of the person delivering the hearing aid(s) and the name of the person who sold the hearing aid(s);
- (3) The name of the purchasing party, if different from the name of the consumer;
- (4) The date of sale, if different from the date of delivery;
- (5) The model of the hearing aid(s); and
- (6) The total cost to the purchaser for all products and services.

(b) A copy of all statements of sales shall be retained for a period of three calendar years from the date of delivery of the hearing aid(s).

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0007 AUDIOMETERS

*History Note: Statutory Authority G.S. 93D-3;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0008 CALIBRATION CHECK FOR AUDIOMETERS

(a) All audiometers used in the fitting and selling of hearing aids shall have an annual calibration check and be recalibrated, if necessary, in accordance with the standards cited in Rule .0010 of this Sub-chapter.

(b) Whenever any individual applies for issuance and renewal of a license or an apprentice registration certificate, the board shall require proof of audiometer calibration within the 12 consecutive months preceding such application.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0009 APPROVAL OF CALIBRATORS

The board shall not accept calibration records from any individual or calibration center unless such individual or center has been approved by the board prior to calibration. Manufacturers of audiometers may calibrate without prior approval of the board. A list of authorized individuals and centers, as well as the form used to apply to become an authorized calibrator, may be obtained from the executive secretary of the board.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0010 STANDARDS FOR AUDIOMETERS

All audiometers used for fitting and selling hearing aids shall be in calibration according to the standards contained in the ANSI S3.6-1969 specifications for audiometers and which are herein adopted by reference, in accordance with G.S. 150B-14 (b).

History Note: Statutory Authority G.S. 93D-3(c); 150B-14;

*Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0011 SYMBOLS FOR AUDIOGRAMS

(a) The board recommends that the following standard symbols be used in recording hearing thresholds:

- (1) Right ear unmasked will be denoted as follows:
 - (A) air -- a small circle;
 - (B) bone -- a 45 degree angle pointing left.
- (2) Left ear unmasked will be denoted as follows:
 - (A) air -- a small "x";
 - (B) bone -- a 45 degree angle pointing right.
- (3) Right ear masked will be denoted as follows:
 - (A) air -- a small triangle;
 - (B) bone -- a single bracket open on the right.
- (4) Left ear masked will be denoted as follows:
 - (A) air -- a small square;
 - (B) bone -- a single bracket open on the left.
- (5) No response for the right ear at the maximum output of the audiometer will be denoted by a small arrow pointing southwest which is attached to the corresponding unmasked and masked symbols.
- (6) No response for the left ear at the maximum output of the audiometer will be denoted by a small arrow pointing southeast which is attached to the corresponding unmasked and masked symbols.
- (7) An asterisk will denote the contralateral ear masked.
- (8) A capital "S" will denote sound field responses.

(b) In all cases where the symbols listed in this Rule are not used, a symbol key shall be included on the audiogram form.

History Note: Statutory Authority G.S. 93D-3(c);

*Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0012 DISPLAY OF PRINTED CERTIFICATES

Pursuant to G.S. 93D-12, all licensees and registered apprentices shall have a street address, located within the State of North Carolina, at which they display their license or apprentice registration certificate. In addition, all licensees and registered apprentices shall carry with them a copy of their license or apprentice registration certificate, or their pocket identification card issued by the board, when doing business which takes them outside of their offices.

History Note: Statutory Authority G.S. 93D-3(c); 93D-12;

*Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0013 LOCATION FOR PROVISION OF SERVICE

(a) Service after sale is a consumer's right and all licensees and registered apprentices shall furnish to each hearing aid purchaser, in writing, at least one business address within the State of North Carolina where service and fulfillment of guarantees can be obtained. This information shall be given to the purchaser by the time of delivery of the hearing aid(s).

(b) A post office box shall not suffice for the business address referred to in Paragraph (a) of this Rule and the address of any hearing aid manufacturer, distributor, or repair facility, located outside the State of North Carolina, shall not suffice for this required address. In addition, the address of any hearing aid manufacturer or repair facility within the State of North Carolina shall not suffice for the referenced address, unless the licensee or registered apprentice who is the seller of the hearing aid(s) is also the owner or an employee of such facility.

History Note: Statutory Authority G.S. 93D-3(c);

*Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

SUBCHAPTER 22J - CODE OF ETHICS

.0001 FRAUD

*History Note: Statutory Authority G.S. 93D-13;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0002 EMPLOYMENT OF UNQUALIFIED PERSONS

It shall be unethical to employ directly or indirectly any unqualified person to perform in a capacity regulated by Chapter 93D of the General Statutes of North Carolina.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0003 ADVERTISING

It shall be unethical to perform any of the following acts:

- (1) To use or cause or prompt the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is misleading, deceiving, or untruthful;
- (2) To advertise a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to such advertisements cannot have it demonstrated to them or cannot purchase the advertised model or kind from the licensee or registered apprentice, and the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind of hearing aid than that advertised;
- (3) To advertise that a product is offered for sale at a special or reduced price, or words of similar meaning such as "sale price," when, within the past six months from the date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at a higher price;
- (4) To advertise hearing aids at a low price and thereafter attempt to encourage customers to purchase similar hearing aids which were not described and priced in such advertising; or
- (5) To advertise or disseminate any information which represents hearing aids as having a regular price or stated value, or words of similar meaning such as "list price," when, within the past six months from the date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at that price.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-13(a);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0004 USE OF LICENSE BY ANOTHER

*History Note: Statutory Authority G.S. 93D-13;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0005 DEFAMATION OF COMPETITORS

It shall be unethical to defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questioned credit standing or competency, or to falsely disparage the products of competitors in any respect.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0006 DISPLAY OF PRODUCTS

*History Note: Statutory Authority G.S. 93D-13;
Eff. April 23, 1976;*

FINAL RULES

Repealed Eff. May 1, 1988.

.0007 PRICES

It shall be unethical to quote prices of a competitor without disclosing that they may not be the actual current prices charged by the competitor.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-13(a);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0008 USE OF TRADEMARKS

It shall be unethical to imitate, copy, or otherwise simulate the trademarks, trade names, service marks, brands, or labels of competitors for the purpose of misleading or deceiving consumers.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-13(a);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0009 OBTAINING INFORMATION ABOUT COMPETITORS

It shall be unethical to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by misrepresentations, or by any other unfair means.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0010 INDUCEMENTS TO PURCHASE

It shall be unethical to directly or indirectly give, offer to give, permit, or cause to be given money or anything of value to any person who advises another in a professional capacity, for the purpose of diverting or influencing the freedom of choice of the consumer in the selection of a source for the fitting and selling of hearing aids.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0011 MISREPRESENTATION OF EDUCATION

.0012 MISREPRESENTATION OF PRODUCTS

.0013 UNETHICAL BUSINESS PRACTICES

*History Note: Statutory Authority G.S. 93D-13;
Eff. April 23, 1976;
Repealed Eff. May 1, 1988.*

.0014 FALSE OR CONCEALED INFORMATION

It shall be unethical to make false statements or representations to the board or to willfully conceal information from the board in connection with the issuance, reinstatement, reissuance, replacement, or renewal of a license or an apprentice registration certificate, including information as to whether any registered apprentice has satisfied or complied with the apprenticeship requirements.

*History Note: Statutory Authority G.S. 93D-3(c); 93D-13(a);
Eff. May 1, 1988.*

SUBCHAPTER 22K - FORMS

.0001 DESIGNATION

The forms used by the North Carolina State Hearing Aid Dealers and Fitters Board shall be known by the following titles:

- (1) Application for License;
- (2) Application for Apprentice Registration Certificate;

- (3) Application for License Renewal;
- (4) Plan for Completing the Supervision Requirements for the Apprenticeship;
- (5) Report of the Apprenticeship Experience;
- (6) Application for Approval of a Program for CEU Accreditation;
- (7) Report of Program Attendance for Issuance of CEU Credit;
- (8) Application to Become an Authorized Calibrator; and
- (9) Application for Replacement of a Valid Printed Certificate Due to Loss or Name Change.

*History Note: Statutory Authority G.S. 93D-3(c); 150B-11(1);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0002 APPLICATION FOR LICENSE

The Application for License form shall be used by all registered applicants, as defined in 21 NCAC 22A .0308, who are seeking issuance of a license.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0003 APPLICATION FOR APPRENTICE REGISTRATION CERTIFICATE

The Application for Apprentice Registration Certificate form shall be used on each occasion that any individual is applying for issuance of an initial apprentice registration certificate, issuance of a new certificate to replace an invalidated apprentice registration certificate, or issuance of a renewal certificate.

*History Note: Statutory Authority G.S. 93D-3(c);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

.0004 ACCESS TO FORMS

The forms listed in 21 NCAC 22K .0001 may be obtained from the executive secretary of the board.

*History Note: Statutory Authority G.S. 93D-3(c); 150B-11(1);
Eff. April 23, 1976;
Amended Eff. May 1, 1988.*

LIST OF RULES AFFECTED

NORTH CAROLINA ADMINISTRATIVE CODE

EFFECTIVE: April 1, 1988

AGENCY

ACTION TAKEN

DEPARTMENT OF AGRICULTURE

2	NCAC 43H .0003	Amended
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GOVERNOR'S OFFICE

9	NCAC 2 Executive Order Number 68 Eff. 03-11-88 Executive Order Number 69 Eff. 03-11-88 Executive Order Number 70 Eff. 03-11-88 Executive Order Number 71 Eff. 03-11-88	•
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DEPARTMENT OF HUMAN RESOURCES

10	NCAC 1B .0201 - .0202 .0206 .0208 - .0213 .0215 - .0216 .0218 - .0220 .0222 - .0224	Amended Repealed Repealed Repealed Repealed Repealed
	14C .1114 .1117	Amended Amended
	20A .0101 - .0102 .0201 - .0203 .0301 .0303 .0308 .0312 - .0317 .0401 - .0405	Amended Repealed Repealed Repealed Repealed Repealed
	20B .0101 - .0108	Amended
	26G .0107	Adopted
	26H .0102 .0105 .0302	Amended Amended Amended

DEPARTMENT OF JUSTICE

12	NCAC 7D .0301	Amended
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DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

14A	NCAC 7 .0101 - .0105 .0106 - .0107 .0201 - .0203 .0204 - .0211 .0301 - .0307 .0308 - .0318 .0401 - .0405 .0406 - .0407	Repealed Adopted Repealed Adopted Repealed Adopted Repealed Adopted
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LIST OF RULES AFFECTED

		.0501 - .0503	Repealed
11		.0501 - .0506	Adopted

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15	NCAC	1A	.0002 .0005 - .0006 .0008	Repealed Repealed Repealed
7O			.0101 - .0105 .0201 - .0202	Amended Amended
10B			.0115	Amended
15			.0104 .0203 - .0204 .0301 - .0302 .0402 .0501 .0601 - .0603 .0701 .0801 .0803 .0903 .1002 - .1003	Amended Amended Amended Amended Amended Amended Amended Amended Amended Amended Amended

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21	NCAC	8G	.0408	Repealed
		8K	.0201	Amended

BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14A	.0102 .0104 - .0105 .0201 - .0207 .0301 - .0309	Amended Amended Repealed Repealed
		14B	.0101 - .0102 .0103 - .0104 .0105 .0107 .0201 .0202 - .0204 .0301 .0302 .0305 - .0306 .0308 - .0309 .0401 - .0402 .0501 .0503	Amended Repealed Amended Amended Amended Amended Repealed Repealed Amended Amended Amended Amended Amended Amended
		14C	.0101 .0102 .0103 .0302 - .0304 .0501 - .0502 .0601 .0701 - .0702 .0901 - .0902 .0903 - .0904 .0905 .0906 - .0908 .0909 - .0911	Amended Repealed Adopted Repealed Repealed Amended Repealed Repealed Amended Repealed Amended Repealed

LIST OF RULES AFFECTED

14D	.0101	Amended
	.0102	Repealed
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	.0301	Repealed
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	.0304	Repealed
	.0305	Amended
	.0309 - .0310	Amended
	.0401 - .0402	Repealed
	.0501 - .0503	Repealed
14E	.0101 - .0103	Repealed
	.0201 - .0205	Repealed
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	.0004	Amended
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	.0007	Amended
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	.0012	Amended
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14K	.0002	Amended
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	.0209	Amended
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	.0005	Amended
	.0014 - .0015	Amended
	.0016 - .0017	Adopted

BOARD OF DENTAL EXAMINERS

21	NCAC 16N	.0308	Amended
		.0503 - .0504	Amended
		.0601	Repealed

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21	NCAC 18	.1606	Amended
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OFFICE OF ADMINISTRATIVE HEARINGS

26	NCAC 2A	.0602	Amended
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3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
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20	Foresters, Board of Registration for
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NORTH CAROLINA ADMINISTRATIVE CODE

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